

# OREGON BULLETIN

Supplements the 2014 *Oregon Administrative Rules Compilation*

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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, rule-making 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 Administrative 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.

## Administrative 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 rule-making 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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## OTHER NOTICES

### REQUEST FOR COMMENTS PROPOSED PROSPECTIVE PURCHASER AGREEMENT FOR ANDERSON PORTLAND PROPERTIES TAX LOTS 200, 300

**COMMENTS DUE:** 5 p.m., Tuesday, Sept. 2, 2014

**PROJECT LOCATION:** NW St. Helens Road and NW Yeon Ave., Portland

**PROPOSAL:** The Department of Environmental Quality seeks comments on its proposed consent order for a prospective purchaser agreement with the City of Portland, Bureau of Parks and Recreation concerning its acquisition of real property located on NW St. Helens Road near NW Yeon Avenue, Portland, Oregon. The site is located approximately 2,000 feet southwest of a portion of the Willamette River within the area designated by EPA as the Portland Harbor Superfund Study Area. Although the site is undeveloped, soil was contaminated with PCBs, which site records indicate were likely from equipment that was stored on this site by one or more adjacent property owners. In 2011, approximately 640 tons of PCB-contaminated soil was excavated and disposed of at permitted landfills.

The City intends to buy the land and develop it as a trailhead for access to trails in Forest Park. As a condition of the prospective purchaser agreement, the City agrees to implement measures to minimize erosion and stormwater runoff.

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 the City of Portland 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 the City with third party liability protection.

**HOW TO COMMENT:** Send comments to DEQ Project Manager Bob Schwarz at 400 E. Scenic Drive, Suite 307, The Dalles, Oregon 97058 or [schwarz.bob@deq.state.or.us](mailto:schwarz.bob@deq.state.or.us). For more information contact Mr. Schwarz at 541-298-7255 x230.

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 Environmental Cleanup Site Information database, go to <http://www.deq.state.or.us/lq/ECSI/ecsi.htm>, select "Search complete ECSI database", then enter ECSI# 5529 in the Site ID box and click "Submit" at the bottom of the page. Next, click the link labeled ECSI # 5529 in the Site ID/Info column. Alternatively, you may go directly to the database website for this page at <http://www.deq.state.or.us/Webdocs/Forms/Output/FPController.aspx?SourceId=5529&SourceIdType=11>.

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 prospective purchaser agreement.

**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](mailto:deqinfo@deq.state.or.us). People with hearing impairments may call 711.

### REQUEST FOR COMMENTS PROPOSED CLEANUP APPROVAL AT CASCADE CORPORATION IN GRESHAM

**COMMENTS DUE:** 5 p.m., Tuesday, Sept. 2, 2014

**PROJECT LOCATION:** 2201 and 2525 NE 201st Ave., Gresham, OR

**PROPOSAL:** The Department of Environmental Quality proposes to issue a Certificate of Completion for the Cascade Corporation project including onsite and offsite properties, based on results of site investigation and cleanup activities performed at the Cascade site located at 2201 and 2525 NE 201st Drive in Gresham, Oregon. DEQ has determined that the cleanup is complete and residual volatile organic compound contamination does not pose risks to human health and the environment exceeding the acceptable levels defined in ORS 465.315.

**HIGHLIGHTS:** Cascade Corporation has manufactured fork lift attachments in North Gresham since 1956. Through its past use of chlorinated solvents, the facility released trichloroethene, commonly referred to as TCE, into the ground and contaminated the Troutdale Gravel Aquifer. The primary sources of solvent releases were past metal degreasing operations and overfilling of waste oil and waste coolant underground storage tanks.

DEQ remedial investigations were conducted from 1988 to 1994. TCE and other volatile organic chemicals contaminated shallow groundwater in the Troutdale Gravel Aquifer and a plume extended off-site, below the Interstate-84 freeway and north to an erosional face where springs emerge. Groundwater contamination also migrated downward from the Troutdale Gravel Aquifer into the underlying Troutdale Sandstone Aquifer and deeper aquifers.

The Troutdale Sandstone Aquifer groundwater contamination area, originally estimated at about 400 acres in size, is known to DEQ as the East Multnomah County Area Groundwater site (ECSI #1479). The Cascade Corporation project (ECSI #635) addresses only contamination in the shallow Troutdale Gravel Aquifer.

Starting in 1989, onsite soil contamination was remediated using soil vapor extraction and soil removal. Groundwater contamination was treated both on site and off site using groundwater pumping and treatment followed with bioremediation. The offsite residual groundwater contamination was also treated with a mulch-filled flow-through trench and phytoremediation provided by a stand of hybrid poplar trees.

Some residual soil contamination remains on site capped below pavement or buildings. Long term management and maintenance of these capped areas will be addressed with a soil management plan and the recording of an Equitable Easement and Servitude by Multnomah County with the deed for the property. Groundwater cleanup levels have been met with a few limited, localized exceptions, and volatile organic compound concentrations will continue to decline due to biodegradation, ongoing phytoremediation, and natural attenuation. Access to remaining residual offsite TGA groundwater contamination will be restricted by the co-located Troutdale Sandstone Aquifer groundwater cleanup project.

DEQ concludes that environmental conditions at the site do not pose an unacceptable risk to human health and the environment, and therefore, meet the requirements of the Oregon Environmental Cleanup Laws.

**HOW TO COMMENT:** Send comments by 5 p.m., Monday, Sept. 1, 2014, to DEQ Project Manager Robert Williams, at 2020 SW 4th Ave, Suite 400, Portland, OR 97201; [williams.robert.k@deq.state.or.us](mailto:williams.robert.k@deq.state.or.us) or fax to 503-229-6899.

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 Environmental Cleanup Site Information database, go to <http://www.deq.state.or.us/lq/ECSI/ecsi.htm>, select "Search complete ECSI database", then enter 635 in the Site ID box and click "Submit" at the bottom of the page. Next, click the link labeled 635 in the Site ID/Info column. Alternatively, you may go directly to the database website for this page at <http://www.deq.state.or.us/Webdocs/Forms/Output/FPController.aspx?SourceId=635&SourceIdType=11>

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

## OTHER NOTICES

**THE NEXT STEP:** DEQ will consider all public comments received by the date and time stated above, before making a final decision regarding the Certificate of Completion. In the absence of comments, DEQ will issue the Certificate of Completion for the Cascade site.

**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](mailto:deqinfo@deq.state.or.us), or 711 for people with hearing impairments.

### REQUEST FOR COMMENTS PROPOSED APPROVAL OF CLEANUP FOR CAIN BULK PLANT

**COMMENTS DUE:** 5 p.m., Tuesday, Sept. 2, 2014

**PROJECT LOCATION:** 2624 Pacific Ave., Forest Grove, Oregon

**PROPOSAL:** DEQ seeks comments on a proposed approval of cleanup for Cain Petroleum Bulk Plant. The cleanup was completed through DEQ's Underground Storage Tank Cleanup Program under Oregon Administrative Rules (OAR) 340-122-0205 through 340-122-0360. The cleanup was completed to meet OAR 340-122-010 through 340-122-0115 to address the environmental cleanup for the above ground storage tanks area of cleanup.

**HIGHLIGHTS:** The underground storage tank release was reported in February 1996, during a site assessment, which was initiated due to a complaint to DEQ by the owner of the 1918 Hawthorne St. property, located southeast of the subject property, that petroleum odors were present in the basement of the residential structure.

The subject property was used as a local bulk petroleum storage plant and distribution facility between approximately the mid-1940s through 1996, which included both UST and above ground storage tank farms. Five above ground tanks were in-place until 1980, while the sixth above ground tank was decommissioned in 1984. The underground storage tanks were installed in 1980 and decommissioned in 1996.

Several subsurface investigations and cleanup activities occurred over the duration of the cleanup. Currently, the property is vacant, but a building on posts, which was formerly Cain Petroleum's main office and a garage exist. Future use is unknown at this time, but residential use is allowed. A DEQ Staff Memo, which details site history, activities, risk evaluation, and risk management are on DEQ's Leaking Underground Storage Tank Cleanup database (see link below).

DEQ also will be contacting affected property owners in the area separately for comments.

**HOW TO COMMENT:** Send comments to DEQ Project Manager Rob Hood at 2020 SW 4th Avenue, Suite 400, Portland, Oregon or [hood.rob@deq.state.or.us](mailto:hood.rob@deq.state.or.us). For more information contact the project manager at 503-229-5617.

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 34-96-0092 in the LUST Number boxes and click

"Lookup" at the bottom of the page. Next, click the link labeled 34-96-0092 in the LUST 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=34-96-0092&SourceIdType=12>.

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

**THE NEXT STEP:** If comments are received, DEQ will address each comment. If no comments are received, DEQ will finalize property use restrictions at select properties and a letter of No Further Action will be issued.

**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](mailto:deqinfo@deq.state.or.us). People with hearing impairments may call 711.

### REQUEST FOR COMMENTS PROPOSED NO FURTHER ACTION FOR RESER BUILDING

**COMMENTS DUE:** 5 p.m., September 1, 2104

**PROJECT LOCATION:** 228/234 S Main St., Condon

**PROPOSAL:** The Oregon Department of Environmental Quality's Voluntary Cleanup Program proposes to issue a no further action determination for the Reser Building site located at 228/234 S Main St. in Condon. DEQ issues a no further action determination when a cleanup has met regulatory standards. DEQ also proposes to delist the site from the Confirmed Release List and Inventory of Hazardous Substances.

**HIGHLIGHTS:** The site has been used for various purposes including a gas station, auto repair, and residential. Petroleum and other contaminants were documented at the site in 2011. Approximately 115 tons of contaminated soil was excavated from the site and transported off-site for disposal. A limited volume of contaminated soil could not be removed because of the proximity to a sidewalk, water line, and a building foundation.

**HOW TO COMMENT:** Send comments by 5 p.m., September 1, 2014, to DEQ Project Manager Katie Robertson by phone at 541-278-4620, by mail at 800 SE Emigrant Ave., Suite 330, Pendleton, OR 97801, by e-mail at [robertson.katie@deq.state.or.us](mailto:robertson.katie@deq.state.or.us) or by fax at 541-278-0168.

To access site summary information, the consent order, and other documents visit DEQ's Environmental Cleanup Site Information (ECSI) database at <http://www.deq.state.or.us/lq/ecsi/ecsi.htm> under Site ID 4217. To review the project file, contact the project manager above for a file review appointment.

**THE NEXT STEP:** DEQ will consider all public comments received before making a final decision on the proposed no further action determination. DEQ will provide written responses to all public comments received.

**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](mailto:deqinfo@deq.state.or.us), or 711 for people with hearing impairments.

# NOTICES OF PROPOSED RULEMAKING

## 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:** Amend rules related to the continuing education requirements, use of title, renewals, and examinations.

**Stat. Auth.:** ORS 672.007, 672.020, 672.160, 672.170 & 672.255

**Other Auth.:** ORS 670.310

**Stats. Implemented:** ORS 672.002–672.325

**Proposed Amendments:** 820-010-0417, 820-010-0463, 820-010-0505, 820-010-0520, 820-010-0730, 820-015-0026, 820-050-0010

**Last Date for Comment:** 9-9-14, Close of Business

**Summary:** OAR 820-010-0417 — Removes the requirement to obtain a passing grade for the buildings portion of the structural examination due to the implementation of the 16-hour structural examination administered by NCEES.

OAR 820-010-0463 — Includes language that the cutoff score for the California geotechnical examination is established by the California board.

OAR 820-010-0505 and 820-010-0520 — Includes language to clarify that failure to pay any fees, including the delinquent fee will place a registration in the “delinquent status.”

OAR 820-010-0730 — Includes language to allow for a PLS registered in another jurisdiction to use the title in Oregon.

OAR 820-015-0026 and 820-050-0010 — Clarifies language related to the grace period for completing continuing professional development.

**Rules Coordinator:** Mari Lopez

**Address:** Board of Examiners for Engineering and Land Surveying, 670 Hawthorne Ave. SE, Suite 220, Salem, OR 97301

**Telephone:** (503) 362-2666

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### Board of Parole and Post-Prison Supervision Chapter 255

**Rule Caption:** This revision simplifies the language of our rule by following the statutory language more closely.

**Stat. Auth.:** ORS 144.125, 144.228, 144.232, 163.105 & 163.115  
**Stats. Implemented:** ORS 144.125, 144.228, 144.232, 163.105 & 163.115

**Proposed Amendments:** 255-062-0011

**Last Date for Comment:** 8-22-14, 5 p.m.

**Summary:** This rule revision simplifies the language of our rule by following the statutory language more closely. ORS 144.125(2) and 144.228. The Board's current practice as to murder review hearings, exit interview for pre-1989 crimes, and parole consideration hearings for dangerous offenders will not change. The change clarifies that extended deferral is available for all aggravated murder hearings (regardless of crime commitment date), which is clear in statute but formerly unclear in our rules.

**Rules Coordinator:** Shawna Harnden

**Address:** Board of Parole and Post-Prison Supervision, 2575 Center St. NE, Salem, OR 97301

**Telephone:** (503) 945-0914

\*\*\*\*\*

### Bureau of Labor and Industries Chapter 839

**Rule Caption:** Amendments clarifying default procedure, eliminating separate amendment process for orders of determination, changes reflecting reorganization.

**Stat. Auth.:** ORS 183, 279C.817, 651.060(4), 658.407(3), 658.820 & 659A.805

**Stats. Implemented:** ORS 183, 279C.815, 279C.860, 279C.860, 279C.885, 652.332(3), 653.065(1), 658.115, 659A.845 & 659A.850

**Proposed Amendments:** 839-050-0080, 839-050-0230, 839-050-0330, 839-050-0340

**Proposed Repeals:** 839-050-0440

**Last Date for Comment:** 8-21-14, Close of Business

**Summary:** The proposed amendments will increase the Agency's efficiency and provide guidance and transparency to respondents.

The agency's Hearings Unit was reorganized during 2012 and renamed the Administrative Prosecution Unit. The agency's OAR 839 division 50 rules were recently amended to eliminate references to the “Hearings Unit” and other terminology specific to the unit's former organization. The agency neglected to change two instances of references to “case presenters,” now called “administrative prosecutors,” in the division 50 rules. The agency proposes to amend OAR 839-050-0080(2)(f) and 839-050-0230(2) to reflect this change.

In addition, the agency proposes to amend OAR 839-050-0330, 839-050-0340(1)(c), and 839-050-0340(5) to further clarify the procedure for default hearings in Wage and Hour cases.

The agency also proposes to repeal OAR 839-050-0440 in its entirety. OAR 839-050-0440 sets out a separate and distinct amendment process for Wage and Hour Orders of Determination which creates confusion. The Agency's proposed elimination of the rule would provide uniformity among cases and clarity for all participants.

**Rules Coordinator:** Marcia Ohlemiller

**Address:** Bureau of Labor and Industries, 800 NE Oregon St., Ste. 1045, Portland, OR 97232

**Telephone:** (971) 673-0784

\*\*\*\*\*

### Department of Consumer and Business Services, Division of Finance and Corporate Securities Chapter 441

**Rule Caption:** Implements securities registration exemption for renewal energy cooperative corporations

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
9-8-14	9 a.m.	350 Winter St. NE, Conference Rm. 260 Salem, OR 97301

**Hearing Officer:** Staff

**Stat. Auth.:** ORS 59.025

**Other Auth.:** 2014 OL Ch. 69, Sec. 2 (Enrolled SB 1520)

**Stats. Implemented:** ORS 59.025, 2014 OL Ch. 69, Sec. 1

# NOTICES OF PROPOSED RULEMAKING

**Proposed Adoptions:** 441-025-0120, 441-025-0121, 441-025-0122, 441-025-0123, 441-025-0124, 441-025-0125, 441-025-0126

**Last Date for Comment:** 9-12-14, 5 p.m.

**Summary:** In 2014, the Legislature enacted Senate Bill 1520. This act exempts renewable energy cooperative corporations from registering membership shares or capital stock as securities. The Legislature conditioned this exemption on any rules adopted by the Director of the Department of Consumer and Business Services. This proposed rulemaking places certain substantive restrictions on a renewable energy cooperative corporations relying on this exemption, such as restrictions on the amount of raised money from non-accredited investors. The rulemaking activity also requires two disclosures be given to prospective members: a general disclosure that discusses the workings of the renewable energy cooperative corporation and risks associated with developing renewable energy generations facilities, and a specific disclosure discussing the risks endemic to a specific project.

**Rules Coordinator:** Shelley Greiner

**Address:** Department of Consumer and Business Services, Finance and Corporate Securities, 350 Winter St. NE, Rm. 410, Salem, OR 97301

**Telephone:** (503) 947-7484

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**Rule Caption:** Further harmonizes mortgage lending licensing rules with the Nationwide Mortgage Licensing System and Registry

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
9-5-14	9 a.m.	350 Winter St. NE, Conference Rm. 260 Salem, OR 97301

**Hearing Officer:** Staff

**Stat. Auth.:** ORS 86A.106, 86A.109, 86A.112, 86A.136, 86A.154, 86A.157, 86A.163, 86A.183, 86A.186, 86A.212 & 86A.242

**Other Auth.:** 12 U.S.C. Section 5101 et seq (the S.A.F.E. Act, Pub. L. 110-289, div. A, title V, Sections 1502-1517)

**Stats. Implemented:** ORS 86A.100, 86A.103, 86A.106, 86A.109, 86A.112, 86A.115, 86A.157, 86A.163, 86A.179, 86A.183, 86A.186, 86A.200, 86A.209, 86A.212, 86A.215, 86A.218, 86A.227 & 86A.239

**Proposed Adoptions:** 441-875-0075

**Proposed Amendments:** 441-850-0005, 441-850-0035, 441-860-0020, 441-860-0040, 441-860-0045, 441-860-0050, 441-860-0070, 441-860-0130, 441-865-0020, 441-865-0025, 441-865-0030, 441-870-0080, 441-875-0030, 441-875-0040, 441-880-0200, 441-880-0210, 441-880-0215, 441-880-0300, 441-880-0310, 441-880-0315

**Last Date for Comment:** 9-12-14, 5 p.m.

**Summary:** In 2008, Congress passed the Secure and Fair Enforcement for Mortgage Licensing Act. The Act, more commonly known as the S.A.F.E. Act, required states to license individuals that take applications and negotiate terms for residential mortgage loans as mortgage loan originators. To implement this new federal licensing requirement, Congress encouraged the states to establish a Nationwide Mortgage Licensing System (NMLS) to provide a comprehensive licensing database. Because of the close supervision of mortgage loan originators by their employers, most states also license mortgage lending business through NMLS. This proposed rulemaking makes changes to Oregon law in order to ensure that Oregon business licensees may continue to efficiently do business through the NMLS system. Furthermore, because the regulation of mortgage lending businesses has evolved since passage of the S.A.F.E. Act, these rules propose minor changes to definitions, application submissions, bonding calculations, reporting requirements, and testing. (For a full list of changes, please see the accompanying statement of need and fiscal impact).

**Rules Coordinator:** Shelley Greiner

**Address:** Department of Consumer and Business Services, Finance and Corporate Securities, 350 Winter St. NE, Rm. 410, Salem, OR 97301

**Telephone:** (503) 947-7484

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## Department of Consumer and Business Services, Insurance Division Chapter 836

**Rule Caption:** Interim medical benefits; implementation of House Bill 4104 (2014)

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
8-25-14	9 a.m.	Labor & Industries Bldg., Rm. F 350 Winter St. NE Salem OR

**Hearing Officer:** Fred Bruyns

**Stat. Auth.:** ORS 731.244

**Other Auth.:** 2014 OL Ch. 94 Sec. 2

**Stats. Implemented:** ORS 656.247 & 2014 OL Ch. 94 Sec. 2

**Proposed Adoptions:** 836-053-0100, 836-053-0105

**Last Date for Comment:** 8-29-14, Close of Business

**Summary:** The Insurance Division proposes to adopt two new rules, OAR 836-053-0100 and 836-053-0105. These rules are necessary to implement ORS 656.247, as amended by House Bill 4104 (2014 Legislative Session). The rules compliment rules of the Workers' Compensation Division intended to facilitate better management and payment for interim medical benefits resulting from a work-related injury or disease.

The proposed rules prohibit a carrier from imposing a waiver or exclusion in a health benefit plan for coverage of a service otherwise provided solely on the basis that the service is provided for a work-related injury or disease.

The proposed rules also establish an expedited preauthorization process for approving the provision of interim medical services.

The rules also specify how payment is accomplished if a workers' compensation claim is approved or denied.

Finally the rules clarify when a claim is deemed a "clean claim" for purposes of prompt payment of claims.

**Rules Coordinator:** Victor Garcia

**Address:** Department of Consumer and Business Services, Insurance Division, 350 Winter St. NE, Salem, OR 97301

**Telephone:** (503) 947-7260

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**Rule Caption:** Special Enrollment Period and Filing, Rating and Plan Guidance for 2015 Transitional Plans

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
9-17-14	1 p.m.	Labor & Industries Bldg., Rm. E 350 Winter St. NE Salem OR

**Hearing Officer:** Jeannette Holman

**Stat. Auth.:** ORS 731.244, 743.018, 743.019, 743.020, 743.731, 743.737, 743.745 & 743.769

**Other Auth.:** 2014 OL Ch. 80

**Stats. Implemented:** ORS 743.731, 743.737, 743.745, 743.766 to 743.769, 746.015 & 746.240 & 2014 OL Ch. 80, Sec. 2 (Enrolled SB 1582)

**Proposed Adoptions:** 836-010-0013, 836-053-0066

**Proposed Amendments:** 836-053-0431, 836-053-0465

**Last Date for Comment:** 9-19-14, Close of Business

**Summary:** These proposed permanent rules replace the temporary rules that established a special enrollment period and set forth the filing and rating requirements and plan guidance for transitional plans in 2015 and implemented the provisions of chapter 80, Oregon Laws 2014. At this time, it is unknown whether the rules will be applied to future extensions of the transitional plans, if any.

**Rules Coordinator:** Victor Garcia

**Address:** Department of Consumer and Business Services, Insurance Division, 350 Winter St. NE, Salem, OR 97301

**Telephone:** (503) 947-7260

# NOTICES OF PROPOSED RULEMAKING

## Department of Consumer and Business Services, Oregon Occupational Safety and Health Division Chapter 437

**Rule Caption:** Adopt amendments to Confined Spaces standard for general industry and construction.

**Date:** 8-25-14      **Time:** 10 a.m.      **Location:** Portland General Electric  
4245 Kale St. NE  
Salem, OR 97305

**Hearing Officer:** Sue Joye

**Stat. Auth.:** ORS 654.025(2) & 656.726(4)

**Stats. Implemented:** ORS 654.001–654.295

**Proposed Amendments:** 437-002-0146

**Last Date for Comment:** 9-5-14, Close of Business

**Summary:** This rulemaking amends OAR 437-002-0146, Confined Spaces.

These amendments clarify employer obligations and eliminate confusing requirements.

Paragraph (2) Exceptions: The exception to these rules for excavation work was revised to reflect that these rules only apply in situations where employees can bodily enter sewer spaces.

Paragraph (3) Definitions: Several definitions were added and/or modified for clarity, including:

- Alternate entry
- Blanking or blinding
- Continuous system
- Control or controlling
- Double block and bleed
- Hazard control
- Hazard elimination
- Isolate or isolation
- Rescue
- Simulated Permit-Required Confined Space
- Ventilate or ventilation

Paragraph (4) Evaluation: Language clarifications were made in the responsibility to evaluate confined spaces. For example, employers with mobile workers must evaluate the areas where their employees are working, not the entire site.

Paragraphs (5) and (6): Language clarifications were made in the permit space entry program and permit entry process. For example, entry permits has a number of items that must be included in the permit. These items were removed from (5) Permit-Required Confined Space Entry Program and Permits and added to (6) Permit Entry.

Paragraph (9) Rescue: The requirements for rescue were re-organized; redundancy in non-entry, entry and third-party first aid and CPR training requirements were removed, and language clarifications were made.

The requirement for a written agreement between an employer and a third-party rescue service provider was removed.

Removed the ambiguity of whether a permit is required when an activated third-party rescue service provider performs a rescue.

The requirement for rescuers to be trained in first aid and CPR was changed to knowledgeable in first aid and CPR. The requirement for one member to be certified in both was not changed.

The requirement for practice rescues was changed from annual to prior to an entry and within 12 months before an entry.

The term “self-rescue” was removed from the rule, except in a note that was added to clarify that self-rescue is not a viable rescue option.

The redundant paragraph for third-party rescue providers was removed.

Paragraph (10) Alternate Entry: The exception for continuous systems was modified to allow for alternate entry when engulfment cannot occur.

A note was added that when fall hazards have been addressed and all other physical hazards eliminated and all atmospheric hazards have been eliminated or controlled with continuous ventilation, alternate entry is allowed.

Clarification language was added to specify who is authorized to allow alternate entry.

The documentation of the direct reading instrument calibration date was removed.

Paragraph (11) Training: The requirements for training were reorganized for clarity.

A note was added for awareness training to clarify when employees need awareness training.

Appendices: Language in the appendices was modified for clarification.

The sample permits were replaced with a new sample permit and a sample alternate entry form.

Please visit our web site [www.orosha.org](http://www.orosha.org)

Click ‘Rules’ in the left vertical column and view our proposed, adopted, and final rules.

**Rules Coordinator:** Sue C. Joye

**Address:** Department of Consumer and Business Services, Oregon Occupational Safety and Health Division, 350 Winter St. NE, Salem, OR 97301-3882

**Telephone:** (503) 947-7449

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

**Rule Caption:** Interim medical benefits; implementation of House Bill 4104 (2014)

**Date:** 8-25-14      **Time:** 9 a.m.      **Location:** Labor & Industries Bldg., Rm. F  
350 Winter St. NE  
Salem OR

**Hearing Officer:** Fred Bruyns

**Stat. Auth.:** ORS 656.245, 656.704, & 656.726(4)

**Stats. Implemented:** ORS 656.247 (2014 OL Ch. 94)

**Proposed Amendments:** Rules in 436-009, 436-009-0035

**Last Date for Comment:** 8-29-14, Close of Business

**Summary:** The agency proposes to amend OAR 436-009, Oregon Medical Fee and Payment Rules. To make the rules that govern interim medical benefits consistent with ORS 656.247, as amended by House Bill 4104 (2014), these rules would:

- Exclude the non-compensable treatments listed under OAR 436-009-0010(12) from coverage as interim medical benefits;
- Remove references to limitations on the types of interim medical services that are payable - diagnostic services, medication to alleviate pain, and services intended to stabilize the claimed condition;
- Explain that a provider may submit a pre-authorization request to the health benefit plan prior to claim acceptance or denial;
- Continue to require that if the medical provider knows that the patient filed a work related claim, the medical provider may not collect any health benefit plan co-pay from the patient during the interim period;
- Require that, if the workers’ compensation insurer accepts the claim, the insurer must pay medical providers as required by the rules;
- Require that, if the workers’ compensation insurer accepts the claim, the health care provider, after receiving payment from the insurer, must reimburse the worker and the health benefit plan for any medical expenses, copayments, or deductibles, paid by the worker or the health benefit plan;
- Eliminate requirements for the health care provider to bill the workers’ compensation insurer for amounts not paid by the health insurer;
- Make clarifying changes to better align the rule with the statute (including statutory wording that was unaffected by HB4104), by specifying that interim medical benefits:
  - Apply only to initial claims for workers’ compensation benefits;
  - Are not due when the patient is enrolled in a managed care organization prior to claim acceptance or denial; and

# NOTICES OF PROPOSED RULEMAKING

— Are payable from the date of the employer's notice or knowledge of the claim to the date the insurer accepts or denies the claim.

**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:** Identification and Management of Inmates that Present with Nonconforming Gender at Intake

**Stat. Auth.:** ORS 179.040, 423.020, 423.030 & 423.075

**Stats. Implemented:** ORS 179.040, 423.020, 423.030 & 423.075

**Proposed Adoptions:** 291-210-0010, 291-210-0020, 291-210-0030

**Last Date for Comment:** 9-15-14, Close of Business

**Summary:** These rules are necessary to establish the department's policy and procedures for the identification, assessment, review, and management of inmates that present with nonconforming gender at intake to the Department of Corrections.

**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:** Periodic Reviews for Inmates Assigned to the Intensive Management Unit

**Stat. Auth.:** ORS 179.040, 423.020, 423.030 & 423.075

**Stats. Implemented:** ORS 179.040, 423.020, 423.030 & 423.075

**Proposed Amendments:** 291-055-0005 – 291-055-0050

**Last Date for Comment:** 9-15-14, Close of Business

**Summary:** These rule amendments are necessary to modify the department's process for conducting meaningful periodic reviews of inmates assigned to the Intensive Management Unit (IMU) or an IMU status cell. Other changes are necessary to reflect operational and organizational changes within the department.

A recent decision from the Ninth Circuit Court of Appeals held that the current review process was insufficient to provide a meaningful periodic review required under the due process clause of the United States Constitution. The amendments are necessary to provide for a meaningful periodic review of IMU inmates every 90 days.

**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:** Video Inactive Calls and Phone Calls for Inmates in ODOC 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:** 291-130-0017, 291-130-0018

**Proposed Amendments:** 291-130-0005, 291-130-0006, 291-130-0011, 291-130-0016, 291-130-0020

**Last Date for Comment:** 9-15-14, Close of Business

**Summary:** The department has expanded its telephone system for inmates to include video interactive phone (VIP) calls. These rules are necessary to establish policy and procedures governing the use of VIP calls. Other changes are necessary to reflect organizational and operational changes within the department.

**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:** Inmate Communication and Grievance Review and Appeal System

**Stat. Auth.:** ORS 179.040, 423.020, 423.030 & 423.075

**Stats. Implemented:** ORS 179.040, 423.020, 423.030 & 423.075

**Proposed Amendments:** 291-109-0100 – 291-109-0200

**Last Date for Comment:** 9-15-14, Close of Business

**Summary:** These rule amendments are necessary to provide clarification to the process for inmates to file a grievance with the Department of Corrections.

**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 Fish and Wildlife Chapter 635

**Rule Caption:** Amend Rules to Classify Three Species of Wildlife and Amend Criteria for Classification Request

**Date:** 9-5-14

**Time:** 8 a.m.

**Location:** 102 E 1st St.

Joseph, OR 97846

**Hearing Officer:** Oregon Fish and Wildlife Commission

**Stat. Auth.:** ORS 496.012, 496.138, 496.146, 497.298, 497.308, 497.312, 497.318, 498.022, 498.052 & 498.222

**Stats. Implemented:** ORS 497.312, 497.318, 498.022, 498.052 & 498.222

**Proposed Amendments:** Rules in 635-056

**Last Date for Comment:** 9-5-14, Close of Hearing

**Summary:** Amend division 56 rules to classify as prohibited, non-controlled or controlled species and amend criteria for classification request.

**Rules Coordinator:** Therese Kucera

**Address:** Department of Fish and Wildlife, 4034 Fairview Industrial Dr. SE, Salem, OR 97302

**Telephone:** (503) 947-6033

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**Rule Caption:** Adopt Rules for Confederated Tribes of Grand Ronde; Approval of Fish and Wildlife Management Plan

**Date:** 9-5-14

**Time:** 8 a.m.

**Location:** 102 E 1st St.

Joseph, OR 97846

**Hearing Officer:** Oregon Fish and Wildlife Commission

**Stat. Auth.:** ORS 496.138

**Stats. Implemented:** ORS 506.129 & 507.030

**Proposed Adoptions:** Rules in 635-043

**Last Date for Comment:** 9-5-14, Close of Hearing

**Summary:** The rule delegates management authority within certain specified limits for fish and wildlife resources to the Confederated Tribes of Grand Ronde (CTGR) on CTGR Reservation and Trust lands pursuant to the CTGR Fish and Wildlife Management Plan, and authorizes the take of animals by species and number. The delegation authority would implement a provision of a 2007 Proclamation signed by the Governor, Chair of the Fish and Wildlife Commission and Chair of the Tribal Council.

**Rules Coordinator:** Therese Kucera

**Address:** Department of Fish and Wildlife, 4034 Fairview Industrial Dr. SE, Salem, OR 97302

**Telephone:** (503) 947-6033

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

**Rule Caption:** Medicaid Long Term Care Quality and Reimbursement Advisory Council

**Date:** 8-18-14

**Time:** 10:30 a.m.

**Location:** Human Services Bldg,  
500 Summer St. NE, Rm. 160  
Salem, OR 97301

**Hearing Officer:** Staff

# NOTICES OF PROPOSED RULEMAKING

**Stat. Auth.:** ORS 410.070 & 410.555  
**Stats. Implemented:** ORS 410.550-410.555  
**Proposed Amendments:** 411-001-0120  
**Proposed Repeals:** 411-001-0120(T)  
**Last Date for Comment:** 8-21-14, 5 p.m.

**Summary:** The Department of Human Services (Department) is proposing to amend OAR 411-001-0120 to bring the rules in compliance with statute. The Department will do this by removing language that allows the Department or Oregon Health Authority (Authority) to enact rules affecting the Medicaid Reimbursement System without the Medicaid Long Term Care Quality and Reimbursement Advisory Council's (Council) recommendation.

**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:** Payment Limitations in Community-Based Settings  
**Date:** 8-18-14      **Time:** 9:30 a.m.      **Location:** 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 Amendments:** 411-027-0005, 411-027-0020, 411-027-0025, 411-027-0050, 411-027-0075, 411-027-0150  
**Proposed Repeals:** 411-027-0005(T), 411-027-0020(T), 411-027-0025(T)  
**Last Date for Comment:** 8-21-14, 5 p.m.

**Summary:** The Department of Human Services (Department) is amending OAR 411-027 to make permanent temporary rule language that became effective on March 20, 2014 to allow the Department to pay the room and board costs for Medicaid eligible individuals who do not have sufficient income to meet their responsibilities described in OAR 411-027-0025 (3) and who do not qualify for the special needs payments.

411-027 is being amended to remove the definition of, and references to, "SPD", as the agency has been renamed "Aging and People with Disabilities (APD)". With this renaming, a new definition for APD was added to the rule. Removed the definition of "Waiver Services" as home and community based services described in this rule are no longer provided through the waiver and are now provided through the K-State Plan.

The definition of "Instrumental Activities of Daily Living (IADL)", "Central Office", "Individual" and "These rules" were added to provide clarity and the intent of these words as they occur in this rule.

Acronyms were added to the definitions to spell out the acronym into words for AAA, ADL, CA/PS, IADL and ICP.

The word "client" was replaced with the word "consumer", as individuals receiving Medicaid long care services are no longer referred to as clients. These individuals are now referred to as consumers.

The definition of "Natural Support" was expanded to refer to natural support providers as voluntary. This was done to meet the Center for Medicare and Medicaid Services (CMS) mandate for considering a natural support as a "voluntarily" unpaid service.

Minor wording changes were made to other existing definitions.

**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

## Department of Human Services, Self-Sufficiency Programs Chapter 461

**Rule Caption:** Amending rules affecting public assistance, medical assistance, or Supplemental Nutrition Assistance Program clients  
**Date:** 8-26-14      **Time:** 9 a.m.      **Location:** 500 Summer St. NE, Rm. 257  
Salem, OR 97301

**Hearing Officer:** Kris Skaro  
**Stat. Auth.:** ORS 409.050, 411.060, 411.070, 411.083, 411.095, 411.116, 411.404, 411.710, 411.816, 412.006, 412.009, 412.014, 412.049, 412.064 & 412.124

**Other Auth.:** 7 USC 2014, 7 CFR 273.9(d)(6)(iii), H.R. 2642, The Agricultural Act of 2014, enacted February 7, 2014

**Stats. Implemented:** ORS 409.010, 409.050, 411.010, 411.060, 411.070, 411.081, 411.083, 411.087, 411.095, 411.116, 411.121, 411.122, 411.400, 411.404, 411.632, 411.704, 411.706, 411.710, 411.730, 411.740, 411.816, 411.825, 412.001, 412.006, 412.009, 412.014, 412.049, 412.064, 412.079, 412.124, 414.025, 414.231, 414.826 & HB 5201 (2014)

**Proposed Amendments:** 461-001-0000, 461-101-0010, 461-110-0370, 461-125-0030, 461-125-0170, 461-135-0075, 461-135-0405, 461-135-0407, 461-135-1260, 461-145-0460, 461-155-0190, 461-155-0250, 461-160-0420, 461-160-0430, 461-160-0620, 461-170-0011

**Proposed Repeals:** 461-001-0000(T), 461-101-0010(T), 461-125-0150, 461-135-0405(T), 461-135-0407(T), 461-135-1260(T), 461-155-0250(T), 461-160-0420(T), 461-160-0620(T), 461-170-0011(T)  
**Last Date for Comment:** 8-29-14, 5 p.m.

**Summary:** OAR 461-001-0000 about definitions in chapter 461 is being amended to make permanent temporary changes adopted on June 26, 2014 and July 1, 2014 which changed the definition of "parent" for JOBS Participation Incentive (JPI) to include two-parent working families. This rule is also being amended to remove references to "GA" (General Assistance) and "GAM" (General Assistance Medical) programs. These programs have not been funded or offered by DHS since September 30, 2005. This rule is being further amended to expand the definition of "OCCS Medical Programs".

OAR 461-101-0010 about program acronyms and overview is being amended to make permanent temporary changes adopted on June 26, 2014 and July 1, 2014 which changed the definition of "parent" for JOBS Participation Incentive (JPI) to include two-parent working families.

OAR 461-110-0370 about filing groups, OAR 461-155-0190 about income and payment standards, and OAR 461-160-0430 about income deductions are being amended to implement the annual increase in the standards for the SNAP Program.

OAR 461-125-0030 about determining deprivation of a child, OAR 461-125-0170 about deprivation based on unemployment or underemployment, and OAR 461-135-0075 about limitation on TANF eligibility period are being amended and OAR 461-125-0150 about determining primary wage earner is being repealed to remove unnecessary references to Primary Wage Earner (PWE). The TANF program treats both adults in a TANF household equally for both benefits and the JOBS Opportunity and Basic Skills (JOBS) program.

OAR 461-135-0405 about children eligible for the ERDC program who can receive child care under a contract between Head Start agency and the Department is being amended to make permanent a temporary change adopted on April 10, 2014 (effective April 1, 2014) to include children receiving TANF program benefits when determining eligibility for placement in a contracted slot with a Head Start agency for child care.

OAR 461-135-0407 about eligibility for contracted child care between Oregon Program of Quality (OPQ) providers and the Department is being amended to make permanent a temporary change adopted on May 1, 2014 that added eligibility for children

# NOTICES OF PROPOSED RULEMAKING

receiving TANF program benefits for placement in a contracted child care slot with an OPQ provider.

OAR 461-135-1260 about JOBS Participation Incentive (JPI) is being amended to make permanent temporary changes adopted on June 26, 2014 which added two-parent working families and set out when these families are eligible for the incentive.

OAR 461-145-0460 about the sale of a resource is being amended to change current policy regarding the treatment of the proceeds from the sale of a resource (other than a home) in the Oregon Supplemental Income Program Medical (OSIPM) and Qualified Medicare Beneficiary (QMB) programs. This amendment identifies situations when the proceeds (including principal and interest) for a sale originating on or after October 1, 2012 are counted as income, resource or excluded. This rule is also being amended to remove obsolete references to "GA" (General Assistance) and "GAM" (General Assistance Medical) programs. These programs have not been funded or offered by DHS since September 30, 2005.

OAR 461-155-0250 about income and payment standards in the Oregon Supplemental Income Program Medical (OSIPM) is being amended to make permanent a temporary change adopted July 1, 2014 that increased the allowance for clothing and personal incidentals for some individuals in nursing facilities or intermediate care facilities for the mentally retarded (ICF/MR) from \$30 to \$60. Additionally, the rule is also amended to adopt a payment standard for these individuals if their countable income (including any SSI) is less than \$60. The payment standard is the difference between the individual's countable income (including any SSI) and \$60.

OAR 461-160-0420 about shelter costs used for the shelter deduction in the SNAP program is being amended to make permanent a temporary rule adopted May 20, 2014 to comply with Section 4006 of The Agricultural Act of 2014, enacted February 7, 2014. This rule states that a filing group is eligible for an additional utility allowance to help with energy costs if they receive an energy assistance payment through the Low-Income Energy Assistance Act. The amount of the energy assistance payment had not been considered. To comply with federal law, the rule states that the assistance payment a filing group receives must be greater than \$20 to qualify for the additional utility allowance. This rule is also being amended to include the annual change in standard utility allowance. Each year Oregon surveys utility companies and the general public about increases in utility costs. The utility allowances are derived from these surveys and approved by the Food and Nutrition Service in the SNAP Program State Plan. There are four utility allowances. The full utility allowance (FUA) is for those households that have heating and cooling costs. The limited utility allowance (LUA) is for those households with more than one non-heating/cooling utility cost. The individual utility allowance (IUA) is for those households with a single non-heat cost. The single utility allowance (TUA) is for those households with only a telephone cost.

OAR 461-160-0620 about income deductions and client liability for long-term care or home and community-based care in the OSIPM program is being amended to make permanent a temporary change adopted July 1, 2014 that increased the deduction for personal needs for an individual receiving long-term care from \$30 to \$60. Additionally, the rule is being amended to remove obsolete references to "GA" (General Assistance) and "GAM" (General Assistance Medical) programs. These programs have not been funded or offered by DHS since September 30, 2005.

OAR 461-170-0011 about changes that must be reported is being amended to make permanent temporary changes adopted on June 26, 2014 which expanded those receiving JOBS Participation Incentive (JPI) to include families in the change reporting system (CRS). OAR 461-170-0011 is also being amended to remove references to "GA" (General Assistance) and "GAM" (General Assistance Medical) programs. These programs have not been funded or offered by DHS since September 30, 2005.

In addition, the above rules may also be changed to reflect new Department terminology, update statute and rule references, and to correct formatting and punctuation.

**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:** Removing obsolete program references in OAR chapter 461

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
8-26-14	9 a.m.	500 Summer St. NE, Rm. 257 Salem, OR 97301

**Hearing Officer:** Kris Skaro

**Stat. Auth.:** ORS 409.050, 411.060, 411.070, 411.083, 411.116, 411.404, 411.710, 411.816, 412.006, 412.009, 412.014, 412.024, 412.049, 412.064, 412.124, 414.065 & 414.115

**Stats. Implemented:** ORS 409.010, 409.050, 411.010, 411.060, 411.070, 411.081, 411.083, 411.087, 411.095, 411.116, 411.117, 411.400, 411.404, 411.439, 411.443, 411.445, 411.632, 411.704, 411.706, 411.710, 411.730, 411.740, 411.816, 412.001, 412.006, 412.009, 412.014, 412.024, 412.049, 412.064, 412.089, 412.124, 414.025, 414.065, 414.115, 414.231, 414.712, 414.826 & 414.839

**Proposed Amendments:** 461-110-0530, 461-110-0630, 461-110-0750, 461-115-0030, 461-115-0050, 461-115-0071, 461-115-0430, 461-115-0700, 461-120-0030, 461-120-0125, 461-120-0210, 461-120-0315, 461-120-0345, 461-120-0350, 461-120-0510, 461-125-0810, 461-135-0505, 461-135-0560, 461-135-0708, 461-135-0950, 461-135-0990, 461-140-0010, 461-140-0040, 461-140-0120, 461-140-0210, 461-140-0242, 461-140-0250, 461-140-0296, 461-140-0300, 461-145-0005, 461-145-0040, 461-145-0050, 461-145-0110, 461-145-0220, 461-145-0230, 461-145-0240, 461-145-0250, 461-145-0260, 461-145-0320, 461-145-0330, 461-145-0360, 461-145-0365, 461-145-0370, 461-145-0410, 461-145-0420, 461-145-0455, 461-145-0470, 461-145-0510, 461-145-0540, 461-145-0600, 461-145-0910, 461-145-0920, 461-145-0930, 461-150-0050, 461-155-0010, 461-155-0020, 461-155-0360, 461-155-0580, 461-155-0600, 461-155-0610, 461-155-0620, 461-155-0640, 461-155-0670, 461-160-0010, 461-160-0015, 461-160-0055, 461-160-0060, 461-160-0070, 461-165-0030, 461-165-0050, 461-165-0110, 461-165-0120, 461-165-0130, 461-170-0200, 461-175-0210, 461-175-0240, 461-175-0310, 461-180-0010, 461-180-0020, 461-180-0065, 461-180-0070, 461-180-0090

**Proposed Repeals:** 461-110-0390, 461-125-0510, 461-135-0700, 461-135-0705, 461-155-0210, 461-160-0500

**Last Date for Comment:** 8-29-14, 5 p.m.

**Summary:** The Department of Human Services (DHS) proposes to remove obsolete references to "GA" (General Assistance) and "GAM" (General Assistance Medical) programs from OAR chapter 461 by amending and repealing numerous rules that refer to these programs. These programs have not been funded or offered by DHS since September 30, 2005.

In addition, the above rules may also be changed to reflect new Department terminology, update statute and rule references, and correct formatting and punctuation.

**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 Transportation,  
Driver and Motor Vehicle Services Division  
Chapter 735**

**Rule Caption:** Implied Consent Hearing Requests and Police Officer Official Duty Conflict

# NOTICES OF PROPOSED RULEMAKING

**Date:** 8-18-14  
**Time:** 9 a.m.  
**Location:** DMV Headquarters  
1905 Lana Ave., Rm. 122  
Salem, OR

**Hearing Officer:** Liz Woods  
**Stat. Auth.:** ORS 184.616, 184.619, 802.010, 813.410 & 813.440  
**Stats. Implemented:** ORS 813.410 & 813.440  
**Proposed Amendments:** 735-090-0020, 735-090-0042, 735-090-0120

**Last Date for Comment:** 8-21-14, Close of Business  
**Summary:** These rules outline how a petitioner or police officer may request an in-person hearing and what occurs when a police officer is unable to attend a hearing. Recently these rules have been questioned. DMV determined that OAR 735-090-0020 was not clear regarding the ability of a petitioner to change a request for an in-person hearing after the initial time period outlined in rule. Therefore, DMV proposes to amend 735-090-0020 to specify when a request from a petitioner can be made or amended. DMV further proposes to amend 735-090-0042 to clarify when a police officer may amend a request for an in-person hearing to correspond with the amendments in 735-090-0020.

In 261OR App, A150353, Johnson vs. DMV, 3/26/14, the Oregon Court of Appeals determined that DMV had incorrectly interpreted official duty conflict when defining acceptable conflicts that prevent a law enforcement officer from appearing at an implied consent hearing. The case specifically involved the conflict of jury duty. In reviewing the court's opinion, DMV determined that, in some cases, other conflicts currently listed in administrative rule would be in conflict with the court's ruling as they do not specifically involve the police officer having a conflict caused by his or her duties as a police officer. Therefore, DMV proposes to amend OAR 735-090-0120 to clarify what constitutes official duty conflict. Hazardous or impeding travel conditions and service in the military have been removed since they are not related to the duties of a police officer.

**Rules Coordinator:** Lauri Kunze  
**Address:** Department of Transportation, Driver and Motor Vehicle Services Division, 355 Capitol St. NE, MS 51, Salem, OR 97301  
**Telephone:** (503) 986-3171

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**Rule Caption:** Clarifies requirements to reactivate a group status for special registration plates - old  
**Stat. Auth.:** ORS 184.616, 184.619, 802.010, 805.205, 805.206  
**Stats. Implemented:** ORS 805.205, 805.206  
**Proposed Amendments:** 735-040-0100

**Last Date for Comment:** 8-21-14, Close of Business  
**Summary:** Clarification: If production of a group's plate (issued under 805.205) is discontinued, in order to restart production the group must reapply as a *new group* [emphasis added] and pay all required fees. DMV has interpreted its statutes and rules to mean:

That once a group becomes inactive, it is required to apply as a new group. This includes: 1) Meeting the general qualifications under ORS 805.205 and DMV rules for a group to be eligible for group plates; and 2) Paying the department an application fee of \$10,000 and all of the department's anticipated costs as required under ORS 805.206.

Text of proposed and recently adopted ODOT rules can be found at web site <http://www.oregon.gov/ODOT/CS/RULES/>.

**Rules Coordinator:** Lauri Kunze  
**Address:** Department of Transportation, Driver and Motor Vehicle Services Division, 355 Capitol St. NE, MS 51, Salem, OR 97301  
**Telephone:** (503) 986-3171

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## Department of Transportation, Motor Carrier Transportation Division Chapter 740

**Rule Caption:** Agency Representation in Contested Cases  
**Stat. Auth.:** ORS 184.616, 184.619 & 823.011  
**Stats. Implemented:** ORS 183.452, 823.031 & 823.033

**Proposed Amendments:** 740-010-0010  
**Last Date for Comment:** 8-21-14, Close of Business  
**Summary:** These rules describe the role of agency representation in a contested case hearing. The Attorney General is authorized to consent to lay representation in a particular hearing or particular classes of hearings in accordance with ORS 183.452. The Attorney General has approved Oregon Department of Transportation, Motor Carrier Transportation Division lay representation for the following types of contested case hearings: assessment of civil monetary penalties for violations of ORS 818, 823, 825, 826 or related rules, suspension or cancellation of motor carrier operating authority, cancellation of registration or tax identification plates issued to motor carriers or farmers, surety bond increase, tariff docket, and reassessment of cases involving weight-mile tax, commercial or prorated registration fees, road use assessment fees or fuels taxes pursuant to ORS 818, 825, and 825 or related rules. The proposed amendment rectifies the exclusion of the reference to ORS Chapter 818 Vehicle Limits. In addition, the rulemaking adds the reference to the road use assessment fees to the cases for reassessment that was excluded from the rule.

Text of proposed and recently adopted ODOT rules can be found at web site <http://www.oregon.gov/ODOT/CS/RULES/>.

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

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**Rule Caption:** Annual Report for Exempt Operations  
**Stat. Auth.:** ORS 184.616, 184.619, 823.011 & 825.018  
**Stats. Implemented:** ORS 825.017 & 825.018  
**Proposed Adoptions:** 740-030-0045

**Last Date for Comment:** 8-21-14, Close of Business  
**Summary:** In accordance with ORS 825.018, owners or operators of vehicles exempt from the provisions of ORS Chapter 825 provided in ORS 825.017 must file an annual report showing the miles of travel by registered weight class of the vehicles for each exempt vehicle. The proposed new rule determines the form and manner the exempt operations will be reported to the Department. An annual report has been created to capture the requirements listed in statute. The annual report includes operations from the prior year and is due no later than March 31 of the following year.

Text of proposed and recently adopted ODOT rules can be found at web site <http://www.oregon.gov/ODOT/CS/RULES/>.

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

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**Rule Caption:** Household Goods Respondents for General Rate Increases  
**Stat. Auth.:** ORS 184.616, 184.619 & 823.011  
**Stats. Implemented:** ORS 825.200, 825.202, 825.224 & 825.226  
**Proposed Amendments:** 740-050-0610

**Last Date for Comment:** 8-21-14, Close of Business  
**Summary:** These rules govern the transportation of intrastate household goods. The proposed amendment increases the revenue generated from an independent tariff from \$250,000 to \$500,000. Respondents for general rate increases are specified as all carriers who are members of Oregon tariff bureaus or who publish individual tariffs that generate more than \$250,000 annually. The increase is necessary to align revenues generated from collective rate tariffs and independent tariffs at consistent aggregated amounts.

Text of proposed and recently adopted ODOT rules can be found at web site <http://www.oregon.gov/ODOT/CS/RULES/>.

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

# NOTICES OF PROPOSED RULEMAKING

**Rule Caption:** Determination of Mailing Date  
**Stat. Auth.:** ORS 184.616, 184.619 & 823.011  
**Stats. Implemented:** ORS 825.225, 825.472 & 825.555  
**Proposed Adoptions:** 740-055-0045  
**Last Date for Comment:** 8-21-14, Close of Business

**Summary:** These rules describe the records, reports, accounting, fees, taxes and penalties requirements for Weight-Mile Tax. United States Postal Service (USPS) postmarks are not required for mailings bearing a permit, meter, or pre-canceled stamp for postage; however, the USPS offers a manual postmark at the counter. The postmark or cancellation mark is used by the Department to determine if the report or fee is late. The proposed new rule provides a method to determine a report date when the report is mailed through USPS and the cancellation mark is absent or unreadable. The proposed new rule allows for the Department to apply a five day grace period to the receive date of the reports or fees mailed through the USPS.

Text of proposed and recently adopted ODOT rules can be found at web site <http://www.oregon.gov/ODOT/CS/RULES/>.

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

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**Rule Caption:** Electronic Truck Tracking Reports  
**Stat. Auth.:** ORS 184.616, 184.619 & 823.011  
**Stats. Implemented:** ORS 319.020, 319.530, 818.225, 825.137, 825.139, 825.232, 825.450, 825.474, 825.480, 825.490, 825.494, 825.496, 825.500, 825.515, 826.005 & 826.007  
**Proposed Adoptions:** 740-065-0000, 740-065-0005, 740-065-0010, 740-065-0015, 740-065-0020, 740-065-0025, 740-065-0030, 740-065-0035, 740-065-0040, 740-065-0045, 740-065-0050  
**Last Date for Comment:** 8-21-14, Close of Business

**Summary:** The proposed rulemaking supports the development of automated electronic systems operated by motor carrier agents that accurately and reliably transmit, process, and stores operating data from motor vehicles and which allows the generation of tax reports and the transmission of taxes, fees for the use of highways under Oregon Highway Use Tax. The new rules specify the procedures and requirements for the motor carrier agents that will operate the automated electronic systems and provides the framework for motor carriers that voluntarily subscribes to electronic truck tracking reports to pay their taxes to Oregon. In addition, the new rules promote the development and use of the latest technologies to improve the operating efficiencies of the state and trucking industries in Oregon.

Text of proposed and recently adopted ODOT rules can be found at web site <http://www.oregon.gov/ODOT/CS/RULES/>.

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

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**Rule Caption:** International Fuels Tax Agreement Retention Period  
**Stat. Auth.:** ORS 184.616, 184.619 & 823.011  
**Stats. Implemented:** ORS 825.490, 825.494 & 825.555  
**Proposed Amendments:** 740-200-0040  
**Last Date for Comment:** 8-21-14, Close of Business

**Summary:** These rules describe the adoption of the International Fuels Tax Agreement (IFTA) Articles of Agreement, the IFTA Audit Manual and the IFTA Procedures. IFTA is applicable to Oregon-based motor carriers who participate in IFTA as a way to report and pay fuel tax to other jurisdictions. Oregon acts as an intermediary between Oregon-based motor carriers and 57 distinct taxing authorities in the US and Canada. The proposed rulemaking is needed to specify a time period of four years to file an amendment or to conduct an audit. While the record retention period is clearly 4 years in the IFTA agreement, there is no statute of limitations specified. The new language enunciates four (4) years as the statute of limitations.

To align with the current statute, the proposed rulemaking removes the penalty of \$150.00 for failure to appear at a hearing.

Text of proposed and recently adopted ODOT rules can be found at web site <http://www.oregon.gov/ODOT/CS/RULES/>.

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

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## Employment Relations Board Chapter 115

**Rule Caption:** Amends Rules to Implement Adding Unrepresented Employees to Existing Bargaining Unit Without Election  
**Stat. Auth.:** ORS 240.086(3), 243.682(2)(b), 243.766(2) & 243.766(7)

**Stats. Implemented:** ORS 243.682  
**Proposed Amendments:** 115-025-0005, 115-025-0010, 115-025-0030, 115-025-0065, 115-025-0070, 115-025-0075

**Last Date for Comment:** 8-22-14, 5 p.m.

**Summary:** These rules are enacted in response to changes made to ORS 243.682. These rules provide:

-The requirements for filing a petition to add unrepresented public employees to an existing bargaining unit without an election.

-The requirements for submitting authorization cards to add unrepresented public employees to an existing bargaining unit.

-The procedures for how one or more of the unrepresented public employees to be added to an existing bargaining unit may request that an election take place, and the procedures for any such election.

-The Employment Relations Board's processing of a petition to add unrepresented public employees to an existing bargaining unit without an election, including the posting of a notice of such a petition.

-The procedures for any objections to a petition to add a group of unrepresented public employees to an existing bargaining unit without an election.

**Rules Coordinator:** April Bathurst  
**Address:** Employment Relations Board, 528 Cottage St. NE, Suite 400, Salem, OR 97301  
**Telephone:** (503) 378-3808

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## Higher Education Coordinating Commission Chapter 715

**Rule Caption:** Clarifies instructional program requirements for Private Career Schools.

Date:	Time:	Location:
8-15-14	8 a.m.	775 Court St. NE Salem, OR 97301

**Hearing Officer:** Angela Rico

**Stat. Auth.:** ORS 345.080

**Stats. Implemented:** ORS 345.080

**Proposed Amendments:** 715-045-0009

**Last Date for Comment:** 8-21-14, Close of Business

**Summary:** The Higher Education Coordinating Commission (Commission) is proposing to clarify instructional program requirements for Private Career Schools, and outlining that the Commission will develop instructional design guidelines and time frames to assist existing (licensed) schools so as to bring all approved programs into compliance.

**Rules Coordinator:** Angela Rico

**Address:** Higher Education Coordinating Commission, 775 Court St NE, Salem, OR 97301

**Telephone:** (503) 378-5690

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**Rule Caption:** Establish new and increase existing fees for the administration and oversight of private career schools

Date:	Time:	Location:
8-15-14	8:30 a.m.	775 Court Street NE Salem, OR 97301

# NOTICES OF PROPOSED RULEMAKING

**Hearing Officer:** Angela Rico  
**Stat. Auth.:** ORS 345.080, 345.110 & 345.450  
**Stats. Implemented:** ORS 345.080, 345.110, 345.325 & 345.450  
**Proposed Amendments:** 715-045-0007  
**Last Date for Comment:** 8-21-14, Close of Business

**Summary:** The Higher Education Coordinating Commission (commission) is proposing to adopt new fees and increase some existing fees to recover costs associated with oversight of private career schools and providing services to licensees, career school faculty, and former students. The proposed rule would raise the fee for conducting a search of a closed career school's transcripts and, if any are found, providing copies to former students from \$10 to \$12, and processing teacher registrations from \$0 for non-cosmetology school teachers, and from \$50 for an initial registration and \$25 for a renewal for cosmetology school teachers, to \$75.

The proposed rule would establish a new fee of \$25 for verifying a teacher's registration, training, or experience; \$7 for processing teacher-trainee registrations; \$25 for responding to requests to determine whether an out-of-state cosmetology license applicant is qualified to take a cosmetology license exam; \$100 for processing career school license renewal applications or semi-annual Tuition Protection Fund payments submitted after the applicable due date; and \$200 for conducting an investigation of a career school when the commission determines that the school has violated any provision of ORS 345.010 to 345.450 or any rule adopted pursuant to ORS 345.010 to 345.450. The proposed rule would also establish a new fee, not to exceed \$5,000, to recover the costs of engaging an individual or business for assistance in conducting an investigation of a career school.

**Rules Coordinator:** Angela Rico  
**Address:** Higher Education Coordinating Commission, 775 Court St NE, Salem, OR 97301  
**Telephone:** (503) 378-5690

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**Rule Caption:** Establish new student data reporting requirements for career schools.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
8-15-14	8:30 a.m.	775 Court Street NE Salem, OR 97301

**Hearing Officer:** Angela Rico  
**Stat. Auth.:** ORS 345.450  
**Stats. Implemented:** ORS 345.325  
**Proposed Amendments:** 715-045-0018  
**Last Date for Comment:** 8-21-14, Close of Business

**Summary:** The Higher Education Coordinating Commission (commission) is proposing to establish new student data reporting requirements for licensed career schools. These new requirements will increase the amount of student data that career schools collect and report to the commission as part of each school's annual license renewal application. Oregon's educational goal is to ensure that by 2025 40% of Oregonians have a bachelor's degree or higher, 40% have an associate's degree or post-secondary credential, and 20% have a high school diploma. ORS 351.009. To determine the number of students being served by Oregon's licensed career schools, the number of graduates those schools are contributing to the state's so-called "middle 40 goal," and the demographics of those students, the commission must increase and improve its career school student data collection efforts. The increased data collection will also allow the state to better track students as they progress from secondary to post-secondary schools, and from postsecondary school to employment.

The proposed rule includes general provisions for protecting student data.

To reduce the regulatory burden on career schools, the proposed rule eliminates a document previously required as part of each school's enrollment process. All of the information printed on that document, aside from a statement informing students that their enrollment agreements were binding contracts, was also printed on the enrollment agreement and in the school catalog. The binding contract statement has been added to the enrollment agreement.

**Rules Coordinator:** Angela Rico  
**Address:** Higher Education Coordinating Commission, 775 Court St NE, Salem, OR 97301  
**Telephone:** (503) 378-5690

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**Rule Caption:** Amend civil penalty rule to reflect ORS 345.992, 345.995 and 2013 OL Ch. 643.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
8-15-14	8:30 a.m.	775 Court Street NE Salem, OR 97301

**Hearing Officer:** Angela Rico  
**Stat. Auth.:** ORS 345.992 & 345.995  
**Stats. Implemented:** ORS 345.995  
**Proposed Amendments:** 715-045-0190  
**Last Date for Comment:** 8-21-14, Close of Business

**Summary:** In 2013, the legislative assembly amended ORS 345.005 to allow the Higher Education Coordinating Commission (commission) to retain reasonable costs related to the investigation and assessment of a civil penalty from the penalties assessed. ORS 345.995 also established factors the commission must consider when determining whether to assess a civil penalty and the amount of that penalty.

The proposed amendments will implement the provisions of ORS 345.995 which allow the commission to retain costs resulting from an investigation that leads to the assessment of civil penalties. The proposed amendments will also eliminate the tiered civil penalty structure from OAR 715-045-0190, and instead rely upon the factors listed in ORS 345.995 when assessing a civil penalty. The proposed amendments also clarify that the commission will assess civil penalties for violations of administrative rules adopted pursuant to ORS 345.010 to 345.450, as provided in ORS 345.992.

**Rules Coordinator:** Angela Rico  
**Address:** Higher Education Coordinating Commission, 775 Court St NE, Salem, OR 97301  
**Telephone:** (503) 378-5690

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**Rule Caption:** Creates single teacher registration scheme for career schools. Creates new rule for competency schools.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
8-15-14	8:30 a.m.	775 Court St. NE Salem, OR 97301

**Hearing Officer:** Angela Rico  
**Stat. Auth.:** ORS 345.080, 345.325 & 345.400  
**Stats. Implemented:** ORS 345.325 & 345.400  
**Proposed Adoptions:** 715-045-0200  
**Proposed Amendments:** 715-045-0012, 715-045-0200  
**Last Date for Comment:** 8-21-14, Close of Business

**Summary:** Corrects references in OAR 715-045-0012 and clarifies language in OAR 715-045-0012 and 715-045-0200.

Transfers requirements for obtaining a cosmetology teacher registration and cosmetology school teacher training program requirements from OAR 715-045-0200 to 715-045-0012. Eliminates requirement that cosmetology school teachers obtain 30 hours of commission-approved continuing education units every three years. Transfers competency-based cosmetology school requirements from OAR 715-045-0200 and places them into a new rule, OAR 715-045-0220.

Amends career school teacher provisions of OAR 715-045-0012 to create a unified scheme for overseeing and registering individuals teaching in licensed career schools. Establishes that registrations issued to career school teachers will expire after three years and must be renewed.

Directs career schools to provide notice to the commission if the school has employed a substitute teacher within 14 days of hiring the substitute teacher.

**Rules Coordinator:** Angela Rico

## NOTICES OF PROPOSED RULEMAKING

**Address:** Higher Education Coordinating Commission, 775 Court St NE, Salem, OR 97301  
**Telephone:** (503) 378-5690

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**Oregon Health Authority,  
Addictions and Mental Health Division:  
Mental Health Services  
Chapter 309**

**Rule Caption:** Permanent amendments to OAR 309-033 regarding seclusion and restraints in hospital and non-hospital care settings.

**Date:** 8-27-14      **Time:** 1 p.m.      **Location:** 500 Summer St. NE, Rm. 252 Salem, OR 97301

**Hearing Officer:** Nola Russell

**Stat. Auth.:** ORS 413.042 & 426.236

**Stats. Implemented:** ORS 426.005–426.309

**Proposed Adoptions:** 309-033-0725, 309-033-0732, 309-033-0733

**Proposed Amendments:** 309-033-0700, 309-033-0710, 309-033-0720, 309-033-0730, 309-033-0735, 309-033-0740

**Last Date for Comment:** 9-2-14, Close of Business

**Summary:** These rules address the approval of community hospitals and non-hospital facilities which provide seclusion and restraint to committed persons and to persons in custody or on diversion.

**Rules Coordinator:** Nola Russell

**Address:** Oregon Health Authority, Addictions and Mental Health Division: Mental Health Services, 500 Summer St. NE, E86, Salem, OR 97301-1118

**Telephone:** (503) 945-7652

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**Oregon Health Authority,  
Division of Medical Assistance Programs  
Chapter 410**

**Rule Caption:** Preferred Drug List March 27, 2014 DUR/P&T Action

**Date:** 8-15-14      **Time:** 10:30 a.m.      **Location:** 500 Summer St. NE, Rm. 137B 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:** 8-19-14, 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:  
Testosterone (Androgel®) Pump;  
Calcitriol;  
Calcium Carbonate;  
Calcium Carbonate/Vitamin D3;  
Cholecalciferol (Vitamin D3);  
Cyanocobalamin (Vitamin B-12);  
Ergocalciferol (Vitamin D2);  
Ferrous Gluconate;  
Ferrous Sulfate;  
Folic Acid;  
Pyridoxine HCL;  
Thiamine HCL;  
Immune Glob, Gam Caprylate (IGG) Injection (Gamunex-C®).  
Non-Preferred:  
Pirbuterol Acetate;  
Doxepin HCL.

**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:** Medicaid Prescription Drug Assistance for Fully Dual Eligible Medicare Part D Clients

**Stat. Auth.:** ORS 413.042

**Stats. Implemented:** ORS 414.065

**Proposed Repeals:** 410-121-0149

**Last Date for Comment:** 8-19-14, 5 p.m.

**Summary:** OAR 410-121-0149 was an emergency rule adopted in response to difficulties related to the roll-out of Medicare Part D. In January 2006, thousands of Oregonians who were dually eligible for Medicare and Medicaid were unable to fill prescriptions because pharmacies could not confirm their Medicare Part D eligibility. OAR 410-121-0149 provided relief by allowing pharmacies to obtain DMAP reimbursement. The issues have since been resolved. This rule is being repealed as it is no longer needed.

**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:** Prior Authorization Guide — March 27, May 29, 2014 DUR/P&T Action

**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:** 8-19-14, 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:

410-121-0040:  
Central Nervous (CNS) Sedatives — Non Benzodiazepines — updated criteria;  
Central Nervous (CNS) Sedatives — Quantity Limit — updated criteria;  
Central Nervous (CNS) Sedatives — Therapy duplication — updated criteria;  
Hepatitis B Antivirals — updated criteria;  
Ivacaftor (Kalydeco®) — updated criteria;  
Multi-Vitamins and Antioxidant Multivitamin Combinations — new criteria (effective August 1, 2014).

**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:** Moratorium by local governments on medical marijuana facilities and defining products dispensed.

**Date:** 8-18-14      **Time:** 9 a.m.      **Location:** Human Services Bldg. (HSB) 500 Summer St. NE, Rm.137 A-D Salem, OR 97301

**Hearing Officer:** Jana Fussell

**Stat. Auth.:** ORS 431.262, 475.314, 475.338 & 2014 OL Ch. 79, Sec. 3

**Stats. Implemented:** ORS 431.262, 475.314 & 2014 OL Ch. 79, Sec. 3

**Proposed Adoptions:** 333-008-1225, 333-008-1245, 333-008-1275, 333-008-1400

# NOTICES OF PROPOSED RULEMAKING

**Proposed Repeals:** 333-008-1225(T), 333-008-1245(T), 333-008-1275(T), 333-008-1400(T)

**Last Date for Comment:** 8-22-14, 5 p.m.

**Summary:** The Oregon Health Authority is proposing to adopt permanent rules for the Medical Marijuana Dispensary Program to comply with SB 1531 (Oregon Laws 2014, chapter 79). The bill had an emergency clause and was effective March 19, 2014. The bill authorizes local governments to impose time and manner of operation regulations on medical marijuana facilities. While local governments create these regulations, they may impose a moratorium on facilities within their jurisdiction until May 1, 2015. In addition the bill requires all marijuana dispensed to be in child-resistant containers (as defined by rule) and no product may be dispensed if it is manufactured to appeal to children (as defined by rule).

These rules implement requirements in SB 1531 related to packaging and manufacturing of usable marijuana, and local government moratoria of dispensaries. These rules define the process by which local governmental jurisdictions may impose a moratorium on facilities located within their jurisdiction; define the type of packaging (child-resistant) that a facility must use when dispensing medical marijuana; and define the type of product that a facility may dispense. The products may not be manufactured or dispensed in a manner that is attractive to minors.

**Rules Coordinator:** Alayna Nest

**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 Health Licensing Agency**  
**Chapter 331**

**Rule Caption:** Adopt program requirements for military spouses/domestic partners and individuals with military training or experience.

**Date:** 8-28-14  
**Time:** 1:30 p.m.  
**Location:** Veterans Affairs Auditorium  
700 Summer St. NE  
Salem, OR 97301

**Hearing Officer:** Samie Patnode

**Stat. Auth.:** ORS 676.308, 676.615, 680.515, 688.720, 688.815, 688.819, 690.047 & 2014 OL Ch. 35

**Stats. Implemented:** ORS 676.308, 680.515, 688.720, 688.815, 688.819, 690.047 & 2014 OL Ch. 35

**Proposed Adoptions:** 331-010-0055, 331-010-0060, 331-010-0070

**Proposed Repeals:** 331-010-0060(T), 331-010-0070(T)

**Last Date for Comment:** 8-28-14, 5 p.m.

**Summary:** Propose to adopt administrative rules to implement a process allowing military spouses or domestic partners to obtain an expedited authorization to practice a profession listed under ORS 676.583 or ORS 676.800. The proposed rules specifies the documentation required to obtain a temporary authorization and requirements for a permanent authorization.

Propose to adopt administrative rules to implement a process for individuals who have obtained military training or experience in a profession listed under ORS 676.583 or ORS 676.800. The military training or experience must be substantially equivalent to the profession specific qualifications. Individuals must submit a Joint Services Transcript specifying military training or experience.

**Rules Coordinator:** Samantha Patnode

**Address:** Oregon Health Licensing Agency, 700 Summer St. NE, Suite 320, Salem, OR 97301-1287

**Telephone:** (503) 373-1917

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**Rule Caption:** Require that all denturists follow the Center for Disease Control and Prevention Guidelines.

**Date:** 8-28-14  
**Time:** 9 a.m.  
**Location:** Veteran Affairs Auditorium  
700 Summer St. NE  
Salem, OR 97301

**Hearing Officer:** Samie Patnode

**Stat. Auth.:** ORS 676.615 & 680.550

**Stats. Implemented:** ORS 680.550

**Proposed Amendments:** 331-420-0010

**Proposed Repeals:** 331-420-0020

**Last Date for Comment:** 8-28-14, 5 p.m.

**Summary:** Amend administrative rule to require all denturists follow all applicable Centers for Disease Control and Prevention Standards including Guidelines for Infection Control in Dental Health Care Settings.

Repeal administrative rule OAR 331-420-0020 Approved Sterilization and Disinfection Standards. The purpose for repealing this rule in entirety is to require that all denturists broadly follow all applicable Centers for Disease Control and Prevention Standards including process for sterilizing instruments, frequency of biological testing and appropriateness of using liquid disinfectants as opposed to using an autoclave.

**Rules Coordinator:** Samantha Patnode

**Address:** Oregon Health Licensing Agency, 700 Summer St. NE, Suite 320, Salem, OR 97301-1287

**Telephone:** (503) 373-1917

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**Oregon Medical Board**  
**Chapter 847**

**Rule Caption:** Fraud or misrepresentation on application, affidavit or registration

**Stat. Auth.:** ORS 677.265

**Stats. Implemented:** ORS 677.190, 677.205 & 677.265

**Proposed Adoptions:** 847-008-0058

**Proposed Amendments:** 847-008-0010, 847-008-0040

**Last Date for Comment:** 8-21-14, Close of Business

**Summary:** The proposed new rule states that violations of ORS 677.190(8), providing false, misleading or deceptive information on any application, affidavit or registration for any license type or status, is grounds for a \$195 fine for the first violation, a \$250 fine for the second violation, and a \$500 fine for the third or subsequent violation, and possibly further disciplinary action. The proposed rule amendments delete the additional references to fraud or misrepresentation within Division 8 in order to have one comprehensive rule. The proposed rule amendments also make some housekeeping changes by deleting the requirement for the applicant to submit an affidavit and affidavit fee because the attestation is now obtained as needed through the electronic application process and there is no affidavit fee.

**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:** Demonstration of clinical competency through ongoing maintenance of certification

**Stat. Auth.:** ORS 677.265

**Stats. Implemented:** ORS 677.100, 677.132, 677.190, 677.265, 677.825 & 677.830

**Proposed Amendments:** 847-020-0182, 847-020-0183, 847-080-0021

**Last Date for Comment:** 8-21-14, Close of Business

**Summary:** The proposed rule amendments clarify when an applicant may be required to demonstrate clinical competency by passing the SPEX, COMVEX or podiatry competency exam. The proposed rule amendments also allow applicants with ongoing maintenance of certification the ability to request a SPEX, COMVEX or podiatry competency exam waiver. The proposed rule

# NOTICES OF PROPOSED RULEMAKING

amendment also reorganizes the subsections, streamlines the language, and contains general grammar and housekeeping changes.

**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:** EMS providers administering naloxone and obtaining peripheral blood specimens

**Stat. Auth.:** ORS 682.245  
**Stats. Implemented:** ORS 682.245  
**Proposed Amendments:** 847-035-0030

**Last Date for Comment:** 8-21-14, Close of Business  
**Summary:** The proposed rule amendment expands the Emergency Medical Responder scope of practice to allow the preparation and administration of naloxone via intranasal device or auto-injector for suspected opioid overdose, clarifies that Advanced EMTs may obtain only peripheral venous blood specimens, and expands the Paramedic scope of practice to allow them to obtain peripheral arterial blood specimens.

**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:** Physician Assistant Limited License Pending Examination may be granted for six month period

**Stat. Auth.:** ORS 677.265  
**Stats. Implemented:** ORS 677.132 & 677.535  
**Proposed Amendments:** 847-050-0023

**Last Date for Comment:** 8-21-14, Close of Business  
**Summary:** The proposed rule amendment revises and clarifies the requirements for a physician assistant applicant to obtain a Limited License, Pending Examination. Specifically, the proposed rule amendment clarifies that the application is subject to the Board's satisfaction; revises the time period from one year to six months; and clarifies that a practice agreement is required after the physician assistant begins practicing.

**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:** Acupuncturist Limited License Pending Examination may be granted for six month period

**Stat. Auth.:** ORS 677.265  
**Stats. Implemented:** ORS 677.759  
**Proposed Amendments:** 847-070-0037

**Last Date for Comment:** 8-21-14, Close of Business  
**Summary:** The proposed rule amendment revises and clarifies the requirements for an acupuncturist to obtain a Limited License, Pending Examination. Specifically, the proposed rule amendment clarifies that the application is subject to the Board's satisfaction and revises the time period from one year to six months.

**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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## Oregon Public Employees Retirement System Chapter 459

**Rule Caption:** Eliminate allocation of partial employer payments based on receivable due date or pre-set priority list.

Date:	Time:	Location:
8-19-14	2 p.m.	PERS Boardroom. 11410 SW 68th Pkwy. Tigard, OR 97223

**Hearing Officer:** Daniel Rivas

**Stat. Auth.:** ORS 238A.450 & 238.650  
**Stats. Implemented:** ORS 238A.050 & 238.705  
**Proposed Amendments:** 459-070-0110  
**Last Date for Comment:** 9-5-14, 5 p.m.

**Summary:** The employer payment remittance process is being revised. Programming for the new employer contribution allocation procedure is being implemented in August 2014 to require that all employer contributions be designated and assigned to specific programs (i.e. employer contributions to their pension reserve accounts, to the PERS Health Insurance Program, or member contributions to the IAP). The rule's priority allocation structure, therefore, will become obsolete.

Sections (4) and (5) of the rule are to be removed because contributions made by the employers under the new programming will be clearly designated or identified as to specific programs and allocated as such. PERS will no longer co-mingle employer contributions and allocate them to receivables in the order of receivables' due dates or a pre-set priority list.

**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 Wine Board Chapter 619

**Rule Caption:** Repeal of administrative rules pertaining to the Oregon Certified Sustainable Wine Certification Program.

Date:	Time:	Location:
8-25-14	2 p.m.	4640 SW Macadam Ave. Suite 240 Portland, OR 97239

**Hearing Officer:** Marie Chambers

**Stat. Auth.:** ORS 576.766(1)  
**Stats. Implemented:** ORS 576.766(1)  
**Proposed Repeals:** 619-005-0010, 619-005-0020, 619-005-0030, 619-005-0040, 619-005-0050, 619-005-0060

**Last Date for Comment:** 8-29-14, Close of Business  
**Summary:** The Board is repealing the administrative rules pertaining to the Oregon Certified Sustainable Wine Certification Program. Participation in the program is voluntary and has diminished over the past two years to less than 10 participants. The Oregon Wine Board is proposing a repeal of the rules so that it can focus its resources towards programs that benefit the majority of the winery and vineyard population.

**Rules Coordinator:** Marie Chambers  
**Address:** Oregon Wine Board, 4640 SW Macadam Ave., Suite 240, Portland, OR 97239  
**Telephone:** (503) 228-8336

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## Parks and Recreation Department Chapter 736

**Rule Caption:** Prohibits Smoking of Tobacco Products on the Ocean Shore

Date:	Time:	Location:
8-20-14	7 p.m.	Seaside Public Library 1131 Broadway Seaside, OR 97138*
8-21-14	7 p.m.	Central Lincoln PUD 2129 N Coast Hwy. Newport, OR 97365*
8-26-14	7 p.m.	Coos Bay Public Library 525 Anderson Ave. Coos Bay, OR 97420*
8-28-14	7 p.m.	North Mall Office Bldg. OPRD HQ 725 Summer St. NE Salem, OR 97301*

**Hearing Officer:** Staff  
**Stat. Auth.:** ORS 390.660

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**Stats. Implemented:** ORS 390.660

**Proposed Amendments:** 736-021-0100

**Last Date for Comment:** 8-29-14, 5 p.m.

**Summary:** \*NOTE: Those who wish to make public comment must register with the hearings officer by 7:30 p.m.

Smoking of tobacco products is currently restricted on properties managed by the Oregon Parks and Recreation Department. Visitors are not allowed to smoke in: public buildings; park lands, including but not limited to trails; developed day use areas and waysides with the exception of those day use areas designated as Safety Rest Areas; park roadways; and areas within campgrounds with the exception of designated campsites. This rule would extend that smoking restriction to ocean shore recreation area managed by the Oregon Parks and Recreation Department.

**Rules Coordinator:** Vanessa DeMoe

**Address:** Parks and Recreation Department, 725 Summer St. NE, Suite C, Salem, OR 97301

**Telephone:** (503) 986-0719

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**Public Utility Commission,  
Board of Maritime Pilots  
Chapter 856**

**Rule Caption:** Redefines substance abuse under Grounds for Pilot Discipline

**Stat. Auth.:** ORS 776

**Stats. Implemented:** ORS 776.116 & 776.325

**Proposed Amendments:** 856-010-0045

**Last Date for Comment:** 8-21-14, 5 p.m.

**Summary:** Redefines grounds for pilot discipline with respect to alcohol and drug usage.

**Rules Coordinator:** Susan Johnson

**Address:** Public Utility Commission, Board of Maritime Pilots, 800 NE Oregon St., Suite 507, Portland, OR 97232

**Telephone:** (971) 673-1530

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**Water Resources Department  
Chapter 690**

**Rule Caption:** Allows for assignment of a permit to one or more parties with replacement permits issued.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
8-28-14	1 p.m.	Oregon Water Resources Dept. North Mall Office Bldg. Conference Rm. 124B 725 Summer St. NE Salem, Oregon 97301

**Hearing Officer:** Kelly Starnes

**Stat. Auth.:** ORS 536.025, 536.027, 537.225 & 537.227

**Stats. Implemented:** ORS 537.225 & 537.227

**Proposed Adoptions:** Rules in 690-325

**Last Date for Comment:** 8-29-14, 5 p.m.

**Summary:** To establish requirements and procedures that shall be used by the Department to evaluate an application by a landowner of record holding a water right permit for irrigation, nursery, temperature control, stock watering or agricultural water use, to assign all or part of the water right permit and to issue a replacement permit to reflect an assignment from the current permit holder to one or more additional permit holders

**Rules Coordinator:** Nancy N. Pustis

**Address:** Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301

**Telephone:** (503) 986-0919

# ADMINISTRATIVE RULES

## Appraiser Certification and Licensure Board Chapter 161

**Rule Caption:** Temporarily amend permanent rules regarding application, examination and renewal process.

**Adm. Order No.:** ACLB 3-2014(Temp)

**Filed with Sec. of State:** 7-7-2014

**Certified to be Effective:** 7-7-14 thru 12-31-14

**Notice Publication Date:**

**Rules Amended:** 161-010-0010, 161-010-0025, 161-010-0045, 161-010-0065, 161-010-0085, 161-015-0000, 161-010-0035

**Subject:** Temporarily amends Oregon Administrative Rule 161, Division 10, Rule 0010, regarding Appraisers Credentials, Application Components, Renewal Procedures and Disciplinary Action disclosure; Rule 0025, regarding Requirements for Acceptable Appraisal Experience; Rule 0035, regarding Prerequisite Experience and Education Requirements for State Certified General Appraisers; Rule 0045, regarding Prerequisite Experience and Education Requirements for State Certified Residential Appraisers; Rule 0065, regarding Prerequisite Experience and Education Requirements for State Licensed Appraisers; Rule 0085, regarding Prerequisite Experience and Education for Supervising Appraisers; Division 15, Rule 0000, regarding Application and Examination Process.

**Rules Coordinator:** Gae Lynne Cooper—(503) 485-2555

### 161-010-0010

#### Appraisers Credentials in Oregon, Application Components, Renewal Procedures, and Disciplinary Actions Disclosure

(1) There are three categories of appraisers in Oregon; state licensed appraiser, state certified residential appraiser, and state certified general appraiser.

(2) Unlicensed/Uncertified individuals may assist in the preparation of an appraisal, but are not allowed to sign the appraisal report.

(3) The application process has three components: Education, Experience and Examination. The education and examination components may be completed prior to approval of the applicant's appraisal experience. Appraisers in Oregon must demonstrate competency by meeting prerequisite qualifying or continuing education, experience and examination requirements established by the Board, in accordance with Appraisal Subcommittee Policy Statement. On all initial and upgrade applications for credentialing, the Board must:

- (a) use a reliable means of approving appraiser experience;
- (b) select the work product to be analyzed for USPAP compliance;
- (c) analyze a representative sample of the applicant's work product;
- (d) exercise due diligence to determine whether submitted documents of work product or experience demonstrates compliance with USPAP.

(4) All licenses and certificates are subject to renewal every two years on or before the last day of the license or certificate holder's birth month.

(a) Each license or certificate may be renewed upon receipt of the renewal fee specified in OAR 161-003-0020, a complete renewal application that includes a current, recognizable, passport style color photograph of the applicant (taken within 30 days preceding receipt of the application), evidence of the completion of continuing education requirements as provided in 161-020-0150, and the fee. The completed application, fee, and evidence of continuing education requirements must be received in the Board office on or before the expiration date of the license to be considered timely. If the expiration date falls on a weekend or legal holiday, the renewal application must be received no later than 5:00 p.m. on the next business day following the date of expiration.

(b) Renewal applications received after the expiration date and within one (1) year of the date of expiration shall be assessed a late fee in addition to the renewal fee. It is unlawful for any appraiser to engage in, carry on, advertise or purport to engage in or carry on real estate appraisal activity within this state after a license or certificate has expired and prior to properly renewing the expired license or certificate.

(c) If an appraiser fails to renew their license or certificate within one year from the date of expiration, the status of the license or certificate becomes terminated and they must reapply pursuant to OAR 161-010-0020 through 161-010-0065.

(d) Licensees on active duty with the United States Armed Forces at the time of renewal may, upon written request to the Board, be provided a military deferral allowing for their otherwise complete application to be considered timely, if received by the Board within 180 days of release from active duty.

(5) Each licensee shall notify the Administrator within thirty (30) days of any disciplinary action imposed in any other state in which the person holds a license or certificate.

Stat. Auth.: ORS 674.305(8) & 674.310

Stats. Implemented: ORS 674

Hist.: ACLB 4-1991(Temp), f. & cert. ef. 8-29-91; ACLB 8-1991(Temp), f. & cert. ef. 12-31-91; ACLB 2-1992, f. & cert. ef. 4-30-92; ACLB 1-1994, f. & cert. ef. 2-1-94; ACLB 1-1998, f. & cert. ef. 7-1-98; ACLB 1-2002, f. & cert. ef. 2-26-02; ACLB 3-2005, f. & cert. ef. 7-22-05; ACLB 2-2006, f. & cert. ef. 7-26-06; ACLB 1-2008, f. & cert. ef. 5-13-08; ACLB 3-2008, f. & cert. ef. 8-13-08; ACLB 1-2010(Temp), f. & cert. ef. 2-1-10 thru 7-27-10; ACLB 2-2010, f. & cert. ef. 4-23-10; ACLB 2-2012(Temp), f. & cert. ef. 8-3-12 thru 1-30-13; ACLB 1-2013, f. & cert. ef. 1-30-13, cert. ef. 1-31-13; ACLB 3-2014(Temp), f. & cert. ef. 7-7-14 thru 12-31-14

### 161-010-0025

#### Requirements for Acceptable Appraisal Experience

The applicant shall present evidence of satisfactory completion of acceptable appraisal experience. An hour of experience is defined as verifiable time spent performing tasks in accordance with acceptable appraisal experience, as defined in OAR 161-010-0020, and does not include travel time. Education cannot be substituted for experience. Acceptable appraisal experience must meet the following criteria:

(1) Review appraisals shall be awarded experience credit when the appraiser performs review(s) in accordance with USPAP.

(2) An appraiser who signs a real property appraisal report prepared by another, even under the label of "review appraiser", must accept full responsibility for the contents of the report. This will appropriately be considered as appraisal experience.

(3) Maximum allowable experience hours

Stat. Auth.: ORS 674.305 & 674.310

Stats. Implemented: ORS 674

Hist.: ACLB 1-1994, f. & cert. ef. 2-1-94; ACLB 3-1996, f. & cert. ef. 2-13-96; ACLB 1-1997(Temp), f. & cert. ef. 1-1-98; ACLB 1-1998, f. & cert. ef. 6-24-98, cert. ef. 7-1-98; ACLB 4-1999, f. & cert. ef. 1-1-00; ACLB 1-2002, f. & cert. ef. 2-26-02; ACLB 3-2003, f. & cert. ef. 5-1-03; ACLB 1-2007, f. & cert. ef. 2-9-07; ACLB 3-2008, f. & cert. ef. 8-13-08; ACLB 3-2014(Temp), f. & cert. ef. 7-7-14 thru 12-31-14

### 161-010-0035

#### Prerequisite Experience and Education Requirements for State Certified General Appraisers

A State Certified General Appraiser, an applicant shall present evidence satisfactory to the Administrator that the applicant has:

(1) At least 3,000 cumulative hours of acceptable appraisal experience, including at least 1,500 hours of appraisal experience in non-residential appraising. "Cumulative" is defined as meaning that experience may be acquired over any time period of at least thirty (30) months.

(a) Applicants whose initial State Licensed Appraiser or State Certified Residential Appraiser credential was issued by the Board, and not by another state licensing agency, are only required to submit an experience log that documents completion of an additional 1,500 hours of non-residential appraisal experience.

(b) Applicants who hold an active Oregon State Licensed Appraiser or a State Certified Residential Appraiser credential obtained through reciprocity or in accordance with OAR 161-015-0025, are only required to submit an experience log that documents completion of an additional 1,500 hours of non-residential appraisal experience. Additionally, the applicant must provide evidence to the Board, from the State issuing the applicant's initial credential, documenting that the initial credential was approved and issued to the applicant based upon an experience log rather than an experience-related affidavit.

(c) Applicants who cannot fulfill the requirements in paragraph

(1)(a) or (b) above, must complete an experience log documenting at least 3,000 cumulative hours of acceptable appraisal experience as set forth in paragraph (1) above.

(2) Successfully completed not less than 300 class hours of acceptable appraisal courses as set forth in OAR 161-020-0110(2)(c), with the following exceptions as noted in paragraphs (2)(a), (2)(b) or (2)(c) below. Each applicant shall have successfully completed the 15-hour Appraisal Foundation's National USPAP Course, or its equivalent, within four (4) years preceding the date of application and have successfully passed an examination thereon.

(a) Applicants holding a valid Oregon Appraiser Assistant registration may satisfy the educational requirements for the State Certified General Appraiser credential by completing the following additional education hours:

(A) Course(s) on General Appraiser Market Analysis and Highest and Best Use (30 hours in not less than 15 hour increments);

(B) Course(s) on Statistics, Modeling and Finance (15 hours);

# ADMINISTRATIVE RULES

(C) Course(s) on General Appraiser Sales Comparison Approach (30 hours in not less than 15 hour increments);

(D) Course(s) on General Appraiser Site Valuation and Cost Approach (30 hours in not less than 15 hour increments);

(E) Course(s) on General Appraiser Income Approach (60 hours in not less than 15 hour increments);

(F) Course(s) on General Appraiser Report Writing and Case Studies (30 hours in not less than 15 hour increments);

(G) Electives (30 hours in not less than 15 hour increments).

(b) Applicants holding a valid Oregon State Licensed Appraiser credential may satisfy the educational requirements for the State Certified General Appraiser credential by completing the following additional education hours:

(A) Course(s) on General Appraiser Market Analysis and Highest and Best Use (15 hours);

(B) Statistics, Modeling and Finance (15 hours);

(C) Course(s) on General Appraiser Sales Comparison Approach (15 hours);

(D) Course(s) on General Appraiser Site Valuation and Cost Approach (15 hours);

(E) Course(s) on General Appraiser Income Approach (45 hours in not less than 15 hour increments);

(F) Course(s) on General Appraiser Report Writing and Case Studies (15 hours).

(G) Electives (30 hours in not less than 15 hour increments).

(c) Applicants holding a valid Oregon State Certified Residential Appraiser credential may satisfy the educational requirements for the State Certified General Appraiser credential by completing the following additional education hours:

(A) Course(s) on General Appraiser Market Analysis and Highest and Best Use (15 hours);

(B) Course(s) on General Appraiser Sales Comparison Approach (15 hours);

(C) Course(s) on General Appraiser Site Valuation and Cost Approach (15 hours);

(D) Course(s) on General Appraiser Income Approach (45 hours in not less than 15 hour increments);

(E) Course(s) on General Appraiser Report Writing and Case Studies (15 hours).

(3) A Bachelors degree or higher from an accredited college or university, unless the requirements of paragraph (4) below are satisfied.

(4) In lieu of the Bachelors degree, an applicant for state certified general appraiser shall successfully pass all of the following collegiate level subject matter courses from an accredited college, junior college, community college or university:

(a) English Composition;

(b) Micro Economics;

(c) Macro Economics;

(d) Finance;

(e) Algebra, Geometry, or higher mathematics;

(f) Statistics;

(g) Computer Science;

(h) Business or Real Estate Law; and

(i) Two elective courses in accounting, geography, agricultural economics, business management, or real estate.

(j) Total hours of equivalent college courses in lieu of a Bachelors degree: 30 semester credit hours or its equivalent for the state certified general appraiser. Any applicant using the in-lieu-of degree courses, must complete a minimum of 3 semester (4.5 quarter) credit hours in each collegiate level subject matter course noted above. If an accredited college or university accepts the College-Level Examination Program (CLEP) examination(s) and issues a transcript for the exam, showing its approval, it will be considered as credit for the college course.

Stat. Auth.: ORS 674.305 & 674.310

Stats. Implemented: ORS 674

Hist.: ACLB 2-1991(Temp), f. & cert. ef. 7-1-91; ACLB 7-1991, f. & cert. ef. 12-23-91; ACLB 7-1991, f. & cert. ef. 12-23-91; ACLB 1-1994, f. & cert. ef. 2-1-94, Renumbered from 161-010-0030 & 161-010-0040; ACLB 1-1997(Temp), f. 10-13-97, cert. ef. 1-1-98; ACLB 1-1998, f. 6-24-98, cert. ef. 7-1-98; ACLB 1-2002, f. & cert. ef. 2-26-02; ACLB 3-2003, f. & cert. ef. 5-1-03; ACLB 1-2008, f. & cert. ef. 5-13-08; ACLB 3-2008, f. & cert. ef. 8-13-08; ACLB 2-2009(Temp), f. 1-28-09, cert. ef. 1-30-09 thru 7-28-09; Administrative correction 8-21-09; ACLB 4-2009, f. & cert. ef. 10-27-09; ACLB 3-2011, f. & cert. ef. 11-17-11; ACLB 1-2013, f. 1-30-13, cert. ef. 1-31-13; ACLB 3-2014(Temp), f. & cert. ef. 7-7-14 thru 12-31-14

## 161-010-0045

### Prerequisite Experience and Education Requirements for State Certified Residential Appraisers

A State Certified Residential Appraiser, applicant shall present evidence satisfactory to the Administrator that the applicant has:

(1) At least 2,500 cumulative hours of acceptable appraisal experience. "Cumulative" is defined as meaning that experience may be acquired over any time period of at least twenty-four (24) months.

(a) Applicants whose initial State Licensed Appraiser credential was issued by the Board, and not by another state licensing agency, are only required to submit an experience log that documents completion of an additional 500 hours of appraisal experience.

(b) Applicants who hold an active Oregon State Licensed Appraiser credential obtained through reciprocity or in accordance with OAR 161-015-0025, are only required to submit an experience log that documents completion of an additional 500 hours of appraisal experience. Additionally, the applicant must provide evidence to the Board, from the State issuing the applicant's initial credential, documenting that the initial credential was approved and issued to the applicant based upon an experience log rather than an experience-related affidavit.

(c) Applicants who cannot fulfill the requirements in paragraph (1)(a) or (b) above, must complete an experience log documenting at least 2,500 cumulative hours of acceptable appraisal experience as set forth in paragraph (1) above.

(2) Successfully completed not less than 200 class hours of acceptable appraisal courses as set forth in OAR 161-020-0110(2)(b), with the following exceptions as noted in paragraphs (2)(a) or (2)(b) below. Each applicant shall have successfully completed the 15-hour Appraisal Foundation's National USPAP Course, or its equivalent, within four (4) years preceding the date of application and have successfully passed an examination thereon.

(a) Applicants holding a valid Oregon Appraiser Assistant registration may satisfy the educational requirements for the State Certified Residential Appraiser credential by completing the following additional education hours:

(A) Course(s) on Residential Market Analysis and Highest and Best Use (15 hours);

(B) Course(s) on Residential Appraiser Site Valuation and Cost Approach (15 hours);

(C) Course(s) on Residential Sales Comparison and Income Approaches (30 hours in no less than 15 hour increments);

(D) Course(s) on Residential Report Writing and Case Studies (15 hours);

(E) Course(s) on Statistics, Modeling and Finance (15 hours);

(F) Course(s) on Advanced Residential Applications and Case Studies (15 hours);

(G) Electives (20 hours).

(b) Applicants holding a valid Oregon State Licensed Appraiser credential may satisfy the educational requirements for the State Certified Residential Appraiser credential by completing the following additional education hours:

(A) Course(s) on Statistics, Modeling and Finance (15 hours);

(B) Course(s) on Advanced Residential Applications and Case Studies (15 hours);

(C) Electives (20 hours).

(3) An Associate degree or higher from an accredited college or university, unless the requirements of paragraph (4) below are satisfied.

(4) In lieu of the Associate degree, an applicant for state certified residential appraiser shall successfully pass all of the following collegiate level subject matter courses from an accredited college, junior college, community college or university:

(a) English Composition;

(b) Principles of Economics (Micro or Macro);

(c) Finance;

(d) Algebra, Geometry, or higher mathematics;

(e) Statistics;

(f) Computer Science; and

(g) Business or Real Estate Law.

(h) Total hours of equivalent college courses in lieu of an Associate degree: 21 semester credit hours or its equivalent for the state certified residential appraiser. Any applicant using the in-lieu-of degree courses, must complete a minimum of 3 semester (4.5 quarter) credit hours in each collegiate level subject matter course noted above. If an accredited college or university accepts the College-Level Examination Program (CLEP) exam-

# ADMINISTRATIVE RULES

ination(s) and issues a transcript for the exam, showing its approval, it will be considered as credit for the college course.

Stat. Auth.: ORS 674.305 & 674.310  
Stats. Implemented: ORS 674  
Hist.: ACLB 1-1994, f. & cert. ef. 2-1-94; ACLB 1-1997(Temp), f. 10-13-97, cert. ef. 1-1-98; ACLB 1-1998, f. 6-24-98, cert. ef. 7-1-98; ACLB 1-2002, f. & cert. ef. 2-26-02; ACLB 3-2003, f. & cert. ef. 5-1-03; ACLB 3-2005, f. & cert. ef. 7-22-05; ACLB 1-2008, f. & cert. ef. 5-13-08; ACLB 3-2008, f. & cert. ef. 8-13-08; ACLB 2-2009(Temp), f. 1-28-09, cert. ef. 1-30-09 thru 7-28-09; Administrative correction 8-21-09; ACLB 4-2009, f. & cert. ef. 10-27-09; ACLB 3-2011, f. & cert. ef. 11-17-11; ACLB 1-2013, f. 1-30-13, cert. ef. 1-31-13; ACLB 3-2014(Temp), f. & cert. ef. 7-7-14 thru 12-31-14

## 161-010-0065

### Prerequisite Experience and Education Requirements for State Licensed Appraisers

A State Licensed Appraiser, applicant shall present evidence satisfactory to the Administrator that the applicant has:

(1) At least 2,000 cumulative hours of acceptable appraisal experience. Cumulative hours must be acquired over at least twelve (12) months.

(2) Successfully completed not less than 150 classroom hours of acceptable appraisal courses as set forth in OAR 161-020-0110(2)(b), with the following exceptions as noted in paragraphs (2)(a) below. Each applicant shall have successfully completed the 15-hour Appraisal Foundation's National USPAP Course, or its equivalent, within four (4) years preceding the date of application and have successfully passed an examination thereon. Applicants holding a valid Oregon Appraiser Assistant Registration may satisfy the educational requirements for the State Licensed Appraiser credential by completing the following additional education hours:

(A) Course(s) on Residential Market Analysis and Highest and Best Use (15 hours);

(B) Course(s) on Residential Appraiser Site Valuation and Cost Approach (15 hours);

(C) Course(s) on Residential Sales Comparison and Income Approaches (30 hours in no less than 15 hour increments);

(D) Course(s) on Residential Report Writing and Case Studies (15 hours).

Stat. Auth.: ORS 674.305 & 674.310  
Stats. Implemented: ORS 674  
Hist.: ACLB 2-2012(Temp), f. & cert. ef. 8-3-12 thru 1-30-13; ACLB 1-2013, f. 1-30-13, cert. ef. 1-31-13; ACLB 3-2014(Temp), f. & cert. ef. 7-7-14 thru 12-31-14

## 161-010-0085

### Pre-Requirement Experience and Education for Supervising Appraiser

Any licensee wishing to supervise a new appraiser assistant, must first apply for and receive a Supervising Appraiser Endorsement.

(1) In order to receive a Supervising Appraiser Endorsement, the applicant must:

(a) Be certified for a minimum of 24 months, be in good standing, and not be otherwise prohibited from supervising appraiser assistants.

(b) Attend a Board approved Supervising Appraiser/Appraiser Assistant Training Course and successfully pass the final exam prior to making application. A prior Supervising Appraiser/Appraiser Assistant Training Course and exam completed for purposes of registering as an appraiser assistant will not count towards obtaining a Supervising Appraiser Endorsement.

(c) Submit a completed Supervising Appraiser Endorsement application that includes the following:

(A) Non-refundable application fee as described on the application form; and

(B) Supervising Appraiser/Appraiser Assistant Training Course completion certificate.

(d) Successfully pass a Board analysis of appraisal work product to verify USPAP compliance.

(2) Upon application approval, the Board will issue the applicant a Supervising Appraiser Endorsement that authorizes the applicant to act as a Supervising Appraiser pursuant to OAR 161-025-0025. The endorsement is valid from the date of issuance.

(3) Any applicant may submit a written request to withdraw their application at any time prior to an official action being taken by the Board.

(4) A Supervising Appraiser Endorsement may be suspended or revoked if the Board determines that the applicant has failed to directly supervise an Appraiser Assistant as required by OAR 161-025-0025.

Stat. Auth.: OAR 183.355(1)(a), 674.305(7) & 674.310(2)  
Stats. Implemented: ORS 674.305(7) & 674.310(2)  
Hist.: ACLB 2-2006, f. & cert. ef. 7-26-06; ACLB 1-2007, f. & cert. ef. 2-9-07; ACLB 4-2007, f. 11-1-07, cert. ef. 1-1-08; ACLB 2-2008(Temp), f. & cert. ef. 8-6-08 thru 2-1-09; ACLB 1-2009, f. 1-28-09, cert. ef. 1-30-09; ACLB 1-2010(Temp), f. 1-29-10, cert. ef. 2-1-10 thru 7-27-10; ACLB 2-2010, f. & cert. ef. 4-23-10; ACLB 3-2011, f. & cert. ef. 11-17-11; ACLB 3-2014(Temp), f. & cert. ef. 7-7-14 thru 12-31-14

## 161-015-0000

### Application Process

(1) The application process contains three components: Education, Experience and Examination. The Education and Examination components may be completed prior to validation of the applicant's appraisal experience.

(2) Appraisers in Oregon must demonstrate competency by meeting prerequisite and continuing education, experience and examination requirements established by the Board in accordance with Appraisal Subcommittee Policy Statement. On all initial and upgrade applications for credentialing, the Board must:

- Use a reliable means of validating appraiser experience;
- Select the work product to be analyzed for USPAP compliance;
- Analyze a representative sample of the applicant's work product;

and

(d) Exercise due diligence in determining whether submitted documentation of work product or experience demonstrates compliance with USPAP.

(3) Any person desiring to take an appraiser examination, must submit a completed pre-printed application evidencing completion of the required qualifying education and experience. Applicants must submit:

(a) List of qualifying education courses by date, course provider, and classroom hours;

(b) Documentation of course completion in the form of official college transcripts, signed letters, or signed certificates of completion. Course outlines or other items may be requested to verify the prerequisite education; and

(c) A pre-printed experience log outlining at least 20 months of verified experience. Log must contain which detailed hours of appraisal experience claimed for credit. Such hours must meet the requirements of OAR 161-010-0035, 161-010-0045, or 161-010-0065 as applicable. Remaining experience must be submitted before December 31, 2014, and before credential will be issued.

(4) The applicant may be required to submit an affidavit from an employer to verify experience claimed.

(5) In compliance with Appraisal Subcommittee Policy Statement, the Board will select a sample of the work product from the applicant's experience log, notify the applicant in writing, and request copies of the sample(s) report and corresponding workfile. The applicant must submit true copies of all documents written reports requested in the Board's notice or file memoranda claimed on the experience log.

Stat. Auth.: ORS 674.305(8) & 674.310  
Stats. Implemented: ORS 674  
Hist.: ACLB 2-1991(Temp), f. & cert. ef. 7-1-91; ACLB 3-1991(Temp), f. & cert. ef. 8-29-91; ACLB 8-1991(Temp), f. & cert. ef. 12-31-91; ACLB 2-1992, f. & cert. ef. 4-30-92; ACLB 1-1994, f. & cert. ef. 2-1-94; ACLB 1-1998, f. 6-24-98, cert. ef. 7-1-98; ACLB 1-2002, f. & cert. ef. 2-26-02; ACLB 3-2003, f. & cert. ef. 5-1-03; ACLB 1-2009, f. 1-28-09, cert. ef. 1-30-09; ACLB 1-2009(Temp), f. 1-28-09, cert. ef. 1-30-09 thru 7-27-10; ACLB 2-2010, f. & cert. ef. 4-23-10; ACLB 1-2013, f. 1-30-13, cert. ef. 1-31-13; ACLB 3-2014(Temp), f. & cert. ef. 7-7-14 thru 12-31-14

## Board of Nursing Chapter 851

**Rule Caption:** To address the specific role and population foci of Adult and Pediatric NPs in Oregon.

**Adm. Order No.:** BN 2-2014(Temp)

**Filed with Sec. of State:** 6-24-2014

**Certified to be Effective:** 7-1-14 thru 11-30-14

**Notice Publication Date:**

**Rules Amended:** 851-050-0005

**Subject:** The purpose of the proposed revisions to OAR 851-050-0050 is to address the specific role and population foci of Adult and Pediatric Nurse Practitioners (NPs) in Oregon and clarify language related to the qualifications and training of Advanced Practice Registered Nurses (APRNs). The proposed revisions will also clarify that licensees holding the following titles, which are all scheduled for national exam certification retirement in December 2014, will remain protected as long as they maintain their licensure and national certification requirements:

Adult Nurse Practitioner;

Acute Care Nurse Practitioner;

Gerontological Nurse Practitioner.

**Rules Coordinator:** Peggy A. Lightfoot—(971) 673-0638

# ADMINISTRATIVE RULES

## 851-050-0005

### Nurse Practitioner Scope of Practice

(1) Purpose of Scope of Practice:

(a) To establish acceptable levels of safe practice for the nurse practitioner.

(b) To serve as a guide for the Board to evaluate nurse practitioner practice.

(c) To distinguish the scope of practice of the nurse practitioner from that of the registered nurse.

(2) The role of the nurse practitioner will continue to expand in response to societal demand and new knowledge gained through research, education, and experience.

(3) The nurse practitioner provides holistic health care to individuals, families, and groups across the life span in a variety of settings, including hospitals, long term care facilities and community based settings.

(4) Within his or her specialty, the nurse practitioner is responsible for managing health problems encountered by the client and is accountable for health outcomes. This process includes:

(a) Assessment;

(b) Diagnosis;

(c) Development of a plan;

(d) Intervention;

(e) Evaluation.

(5) The nurse practitioner is independently responsible and accountable for the continuous and comprehensive management of a broad range of health care, which may include:

(a) Promotion and maintenance of health;

(b) Prevention of illness and disability;

(c) Assessment of clients, synthesis and analysis of data and application of nursing principles and therapeutic modalities;

(d) Management of health care during acute and chronic phases of illness;

(e) Admission of his/her clients to hospitals and/or health services including but not limited to home health, hospice, long term care and drug and alcohol treatment;

(f) Counseling;

(g) Consultation and/or collaboration with other health care providers and community resources;

(h) Referral to other health care providers and community resources;

(i) Management and coordination of care;

(j) Use of research skills;

(k) Diagnosis of health/illness status;

(l) Prescribing, dispensing, and administration of therapeutic devices and measures, including legend drugs and controlled substances as provided in Division 56 of the Oregon Nurse Practice Act, consistent with the definition of the practitioner's specialty category and scope of practice.

(6) The nurse practitioner scope of practice includes teaching the theory and practice of advanced practice nursing.

(7) The nurse practitioner is responsible for recognizing limits of knowledge and experience, and for resolving situations beyond his/her nurse practitioner expertise by consulting with or referring clients to other health care providers.

(8) The nurse practitioner will only provide health care services within the nurse practitioner's scope of practice for which he/she is educationally prepared and for which competency has been established and maintained. Educational preparation includes academic coursework, workshops or seminars, provided both theory and clinical experience are included.

(9) The scope of practice as previously defined is incorporated into the following specialty categories and further delineates the population served:

(a) Acute Care Nurse Practitioner (ACNP) — The Acute Care Nurse Practitioner independently provides health care to persons who are acutely or critically ill. The Acute Care Nurse Practitioner scope may be further differentiated by care of populations newborn to young adulthood, or adults to older adults. National certification exams for ACNPs are scheduled for retirement in 2014. Licensees currently holding this title will need to maintain their current state and national certification to continue recognition of this designation;

(b) Adult Nurse Practitioner (ANP) The Adult Nurse Practitioner independently provides health care to adolescents and adults. The Adult Nurse Practitioner scope may be further differentiated by additional competencies in care of older adults. National certification exams for ANPs are scheduled for retirement in 2014. Licensees currently holding this title will need to maintain their current state and national certification to continue recognition of this designation;

(c) Adult — Gerontology Acute Care Nurse Practitioner (AGACNP), independently cares for adolescents to older adults that are acutely or critically ill;

(d) Adult-Gerontology Primary Care Nurse Practitioner (AGPCNP) independently provides comprehensive primary health care for adolescents to the older adults;

(e) Nurse Midwife Nurse Practitioner (NMNP) The Nurse Midwife Nurse Practitioner independently provides health care to women, focusing on pregnancy, childbirth, the postpartum period, care of the newborn, and the family planning and gynecological needs of women. The scope of practice includes treating the male partners of their female clients for sexually transmitted diseases, and reproductive health. Counseling related to sexuality, relationship, and reproductive issues is included in this scope;

(f) Family Nurse Practitioner (FNP) The Family Nurse Practitioner independently provides health care to families and to persons across the lifespan;

(g) Geriatric Nurse Practitioner (GNP) The Geriatric Nurse Practitioner independently provides health care to older adults. National certification exams for GNPs are scheduled for retirement in 2014. Licensees currently holding this title will need to maintain their current state and national certification to continue recognition of this designation;

(h) Neonatal Nurse Practitioner (NNP) — The Neonatal Nurse Practitioner independently provides health care to neonates and infants;

(i) Pediatric Nurse Practitioner (PNP) The Pediatric Nurse Practitioner independently provides health care to persons newborn to young adulthood; In 2013 the national certification examination changed this title to Pediatric Primary Care Nurse Practitioner (PPCNP) to more accurately reflect the focus of comprehensive pediatric primary care. All previous PNPs licensees will transition to title of PPCNP with renewal;

(j) Acute Care Pediatric Nurse Practitioner (ACPNP) independently cares for newborns to young adults that are acutely or critically ill;

(k) Psychiatric/Mental Health Nurse Practitioner (PMHNP) The Psychiatric/Mental Health Nurse Practitioner independently provides health care to clients with mental and emotional needs and/or disorders. The Psychiatric/Mental Health Nurse Practitioner scope may be further differentiated by care of populations newborn to young adulthood, adolescent to adult, or across the lifespan;

(l) Women's Health Care Nurse Practitioner (WHCNP) The Women's Health Care Nurse Practitioner independently provides health care to adolescent and adult females. The scope of practice includes treating the male partners of their female clients for sexually transmitted diseases and reproductive health. Counseling related to sexuality, relationship, and reproductive health is included in this scope.

Stat. Auth.: ORS 678.380 & 678.395

Stats. Implemented: ORS 678.380

Hist.: NB 3-1987, f. & ef. 3-12-87; NB 3-1990, f. & cert. ef. 4-2-90; NB 1-1992, f. & cert. ef. 2-13-92; NB 7-1992, f. & cert. ef. 7-15-92; NB 4-1994, f. & cert. ef. 8-2-94; NB 9-1994, f. & cert. ef. 12-7-94; NB 2-1995, f. & cert. ef. 4-12-95; NB 7-1996, f. & cert. ef. 10-29-96; NB 6-1997, f. & cert. ef. 5-13-97; BN 10-2003, f. & cert. ef. 10-2-03; BN 13-2006, f. & cert. ef. 10-5-06; BN 9-2009, f. 12-17-09, cert. ef. 1-1-10; BN 6-2013, f. 5-6-13, cert. ef. 6-1-13; BN 2-2014(Temp), f. 6-24-14, cert. ef. 7-1-14 thru 11-30-14

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**Rule Caption:** To define the term "attempt" and add language related to CNA testing eligibility

**Adm. Order No.:** BN 3-2014

**Filed with Sec. of State:** 6-25-2014

**Certified to be Effective:** 8-1-14

**Notice Publication Date:** 6-1-2014

**Rules Amended:** 851-062-0010, 851-062-0050

**Subject:** The recommended housekeeping revision to division 62 is to define the term "attempt" for clarification purposes under OAR 851-062-0010. Proposed additional language to 851-062-0050, related to CNA testing eligibility.

**Rules Coordinator:** Peggy A. Lightfoot—(971) 673-0638

## 851-062-0010

### Definitions

(1) "Application" means a request for certification including all information identified on a form supplied by the Board and payment of required fee.

(2) "Approved Nursing Program" means a pre-licensure educational program approved by the Board for registered or practical nurse scope of practice, or an educational program in another state or jurisdiction approved by the licensing board for nurses or other appropriate accrediting agency for that state.

# ADMINISTRATIVE RULES

(3) "Attempt" means checking in for the examination and receiving the knowledge test booklet or the skill test instructions including the skills that are to be performed.

(4) "Certificate of Completion" means a document meeting the standards set in OAR 851-061-0100(3)(a)-(i) and awarded upon successfully meeting all requirements of a nursing assistant or medication aide training program.

(5) "Certified Medication Aide (CMA)" means a Certified Nursing Assistant who has had additional training in administration of noninjectable medication and holds a current Oregon CMA Certificate.

(6) "Certified Nursing Assistant (CNA)" means a person who holds a current Oregon CNA certificate by meeting the requirements specified in these rules; whose name is listed on the CNA Registry; and who assists licensed nursing personnel in the provision of nursing care. The phrase Certified Nursing Assistant and the acronym CNA are generic and may refer to CNA 1, CNA 2 or all CNAs.

(7) "Certified Nursing Assistant 1 (CNA1)" means a person who holds a current Oregon CNA 1 certificate and who assists licensed nursing personnel in the provision of nursing care.

(8) "Certified Nursing Assistant 2 (CNA 2)" means a person who holds a current, CNA 1 certificate and has met requirements specified in these rules for one or more of the CNA 2 categories.

(9) "Client" means the individual who is provided care by the CNA or CMA including a person who may be referred to as "patient" or "resident" in some settings.

(10) "CNA Registry" means the listing of Oregon Certified Nursing Assistants maintained by the Board.

(11) "Competency evaluation" means the Board-approved process for determining competency.

(12) "Completed Application" means a signed application, paid application fee and submission of all supporting documents related to certification requirements.

(13) "Completed Application Process" means a completed application, a Law Enforcement Data System (LEDS) check including any subsequent investigation; successful competency examination, if required; and final review for issue or denial.

(14) "Endorsement" means the process of certification for an applicant who is trained and certified as a CNA in another state or jurisdiction.

(15) "Enrolled" means making progress toward completion of a RN or LPN nursing program, whether or not registered in the current quarter or semester, as verified by the director or dean of the program.

## (16) Examinations:

(a) "Competency Examination" means the Board-approved examination administered to determine minimum competency for CNA 1 authorized duties. The competency examination consists of a written examination and a manual skills examination. The examination is administered in English.

(b) "Medication Aide Examination" means the Board-approved examination administered to determine minimum competency for CMA authorized duties. The examination is administered in English.

(17) "Full-time" means at least 32 hours of regularly scheduled work each week.

(18) "Licensed Nursing Facility" means a licensed nursing home or a Medicare or Medicaid certified long term care facility.

(19) "Monitoring" means that a Registered Nurse assesses and plans for care of the client, assigns duties to the nursing assistant according to the nursing care plan, and evaluates client outcomes as an indicator of CNA/CMA competency.

(20) "Nurse Aide Registry" means the listing of Certified Nursing Assistants maintained by the appropriate state agency in another state or jurisdiction of the United States.

(21) "OBRA" means the Omnibus Budget Reconciliation Act of 1987, successor legislation and written directives from the Center for Medicare and Medicaid Services (CMS).

(22) "Qualifying Disability" means a diagnosed physical or mental impairment which substantially limits one or more major life activities, and is subject to the protection of the Americans with Disabilities Act (ADA).

(23) "Reactivation" is the process of renewing certification after the certificate is expired.

(24) "Reinstatement" is the process of activating a certificate after it has been subject to disciplinary sanction by the Board.

(25) "Supervision" means that the licensed nurse is physically present and accessible in the immediate client care area, is available to intervene if necessary, and periodically observes and evaluates the skills and abilities of the CNA/CMA to perform authorized duties.

(26) "Unlicensed Persons" means individuals who are not necessarily licensed or certified by this Board or another Oregon health regulatory agency but who are engaged in the care of clients.

Stat. Auth.: ORS 678.442

Stats. Implemented: ORS 678.442

Hist.: BN 6-1999, f. & cert. ef. 7-8-99; BN 2-2004, f. 1-29-04, cert. ef. 2-12-04; BN 4-2004, f. & cert. ef. 2-20-04; BN 13-2005, f. & cert. ef. 12-21-05; BN 10-2010, f. & cert. ef. 6-25-10; BN 14-2013, f. 12-4-13, cert. ef. 1-1-14; BN 3-2014, f. 6-25-14, cert. ef. 8-1-14

## 851-062-0050

### CNA Certification

(1) An applicant for CNA 1 certification must submit a completed application using forms and instructions provided by the Board and pay fees established by the Board. CNA 1 certification may be obtained in one of the following ways:

(a) Training and Competency Examination:

(A) Complete an approved nursing assistant level 1 training program.

(B) Pass the competency examination within two years of the date of completion of the training program and within three attempts.

(b) Military corpsman or medic training and experience and competency examination:

(A) Complete a training course equal in content to OBRA curriculum for nursing assistants; and

(B) Document evidence of at least 400 hours of paid employment in a nursing related capacity within the last two years; and

(C) Pass the competency examination within two years of application and within three attempts.

(c) RN or LPN licensure:

(A) Hold a current unencumbered RN or LPN license in any U.S. state or jurisdiction.

(B) Provide verification of current unencumbered licensure.

(C) A nurse in any U.S. state or jurisdiction who has an encumbered license may be considered on an individual basis.

(d) Enrollment in an approved nursing education program in the United States:

(A) Provide verification of enrollment in an approved nursing program; and

(B) Complete required course work equivalent to a Board-approved nursing assistant level 1 training program documented by:

(i) An official transcript from the nursing program; or

(ii) Written verification of completion of equivalent coursework from the nursing program director or dean.

(e) Graduation from an approved nursing program in the United States:

(A) Within one year after graduation, submit an official transcript documenting graduation from an approved nursing program.

(B) Between one and three years after graduation:

(i) Submit an official transcript documenting graduation from an approved nursing program; and

(ii) Pass the competency examination within two years and three attempts.

(C) Three or more years after graduation. The individual shall meet requirements for initial CNA 1 certification by training and competency examination.

(f) Graduation from a nursing program outside of the United States and competency examination:

(A) Submit a transcript or other documentation, in English, of nursing education which includes nursing knowledge and skills necessary to perform the CNA 1 authorized duties; and

(B) Pass the competency examination; or

(C) Complete the training and competency examination as provided in OAR 851-062-0050(1).

(g) Nursing assistant training outside of the United States. Complete training and competency examination as provided in OAR 851-062-0050(1).

(h) Endorsement:

(A) Provide documentation of successful completion of a nursing assistant training program that met OBRA standards.

(i) Certificate of completion meeting the standards set in OAR 851-061-0100(3)(a)-(i); or

(ii) Letter from facility where training was completed, on letterhead, indicating the date that program was completed and the number of classroom and clinical hours; or

(iii) Information from the appropriate state agency attesting to program completion.

(B) Supply evidence of at least 400 hours of paid employment within CNA 1 authorized duties under the supervision of a nurse in another state

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where the individual held current certification in the two years immediately preceding application for endorsement. A CNA who has graduated from a nursing assistant training program within the previous two years has satisfied this requirement.

(C) Submit verification of current certification by the state agency in which CNA certification is held.

(D) An individual who cannot satisfy these requirements may be eligible for CNA 1 certification by training and competency examination as provided in OAR 851-062-0050(1).

(2) CNA Testing Eligibility:

(a) An applicant who has completed a nursing assistant training program in Oregon or another of the United States, that met OBRA standards shall be eligible for examination for two years from the date of completion of the nursing assistant training program.

(b) An applicant who is eligible for the competency examination as provided in OAR 851-062-0050(1)(b)(c)(f) shall be eligible for examination for two years from the date of application.

(c) A completed application shall be valid for the period of eligibility to test.

(d) An incomplete application becomes void in one year.

(e) An applicant who fails to pass the competency examination within two years of eligibility and within three attempts shall not be eligible to reapply for the examination except that the applicant may regain eligibility enrolling in and successfully completing a Board-approved nursing assistant program.

(f) If a candidate decides to not complete the examination after receiving the knowledge test booklet or the skill test instructions, the attempt will be scored as a failure.

(3) CNA 2 certification may be obtained in one of the following ways:

(a) Training and Competency Examination:

(A) Obtain CNA 1 certification;

(B) Complete an approved CNA 2 training program; and

(C) Pass the corresponding competency evaluation.

(b) RN or LPN licensure:

(A) Hold a current unencumbered RN or LPN license in any U.S. state or jurisdiction.

(B) Provide verification of current unencumbered licensure.

(C) A nurse in any U.S. state or jurisdiction who has an unencumbered license may be considered on an individual basis.

(c) Enrollment in an approved nursing education program in the United States:

(A) Provide verification of enrollment in an approved nursing program; and

(B) Complete required course work equivalent to a Board-approved CNA 2 training program documented by:

(i) An official transcript from the nursing program; and

(ii) Written verification of completion of equivalent coursework from the nursing program director or dean.

Stat. Auth.: ORS 678.440 & 678.442

Stats. Implemented: ORS 678.442

Hist.: BN 6-1999, f. & cert. ef. 7-8-99; BN 2-2004, f. 1-29-04, cert. ef. 2-12-04; BN 10-2010, f. & cert. ef. 6-25-10; BN 14-2013, f. 12-4-13, cert. ef. 1-1-14; BN 3-2014, f. 6-25-14, cert. ef. 8-1-14

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## Board of Parole and Post-Prison Supervision Chapter 255

**Rule Caption:** Bring the rules up to date with current Board practice.

**Adm. Order No.:** PAR 6-2014

**Filed with Sec. of State:** 6-19-2014

**Certified to be Effective:** 6-19-14

**Notice Publication Date:** 3-1-2014

**Rules Amended:** 255-075-0079

**Subject:** Bring the rules up to date with current Board practice, which is a result of the Court of Appeals decision in Hostetter (Hostetter v. Board of Parole and Post-Prison Supervision, 353 Or 747, 304 P3d 38 (2013) denying review of Hostetter v. Board of Parole and Post-Prison Supervision, 255 Or App 328, 296 p3d 664 (2013)).

**Rules Coordinator:** Shawna Harnden—(503) 945-0914

**255-075-0079**

**Guidelines for Re-release**

(1) For technical violation(s):

(a) An offender whose parole has been revoked may serve further incarceration of up to 90 days for each revocation, except when re-release is denied pursuant to OAR 255-075-0096.

(b) An offender sentenced to post-prison supervision who has been revoked and returned to custody may serve further incarceration of up to 90 days for each return, not to exceed the total revocation sanction days allowed in OAR 213-011-0004.

(2) For conduct constituting a crime:

(a) An offender whose parole has been revoked may serve further incarceration of up to 180 days for each revocation, except when re-release is denied pursuant to OAR 255-075-0096.

(b) An offender sentenced to post-prison supervision who has been revoked and returned to custody may serve further incarceration of up to 180 days, not to exceed the total revocation sanction days provided in OAR 213-011-0004.

(3) For conduct constituting a crime and resulting in automatic revocation to the Department of Corrections, pursuant to ORS 144.345(2), an offender may serve further incarceration of up to 180 days.

(4) Notwithstanding subsections (1)–(2) of this rule, offenders sentenced to life imprisonment for murder whose parole has been revoked may serve further incarceration to the sentence expiration date. Offenders sentenced to life imprisonment for aggravated murder whose parole has been revoked may serve further incarceration to the sentence expiration date.

(5) Pursuant to OAR 253-005-0004(2) (9/1/89), an offender sentenced to lifetime post-prison supervision for murder committed on or after November 1, 1989 but before July 14, 1997, may serve further incarceration of up to 90 days for each technical violation, or 180 days for a criminal violation, without a limit on the total revocation days.

(6) Notwithstanding subsections (1)–(2) of this rule, offenders sentenced as dangerous offenders for crimes committed on or after November 1, 1989 may serve repeated incarcerations of 180 days or more up to the sentence expiration date for any supervision violation.

(7) Offenders sentenced as sexually violent dangerous offenders pursuant to ORS 137.765 for crimes committed on or after October 23, 1999, may serve repeated incarcerations of 180 days or more for any violation of post-prison supervision unless or until the post-prison supervision is terminated by a court. The Board may impose only a single sanction for all violations known as of the date of the sanction.

(8)(a) The commencement date for the further term of incarceration as a result of the violation of conditions shall be the date of arrest or return to Oregon custody if arrested out of state for the violation which resulted in the revocation of parole or post-prison supervision.

(b) The commencement date for the further term of incarceration as a result of termination of parole or post-prison supervision under ORS 144.345(2) (“autorevoke”) shall be the sentencing date, if no further action is taken by the Board.

(c) If the jailer, hearings officer, or Board releases the offender from custody pending the violation hearing, the time spent outside actual custody does not count toward the further term of incarceration.

(9) The Board and the Department of Corrections may develop other programs that create exceptions to the sanctions provided in this rule.

(10) Notwithstanding subsections (1)–(7) of this rule, the Board may choose to postpone re-release on parole pursuant to divisions 50 and 60 of this chapter.

(11) Notwithstanding subsections (1)–(8) of this rule, the Board may choose to deny re-release on parole pursuant to OAR 255-075-0096.

(12) Administrative sanctions do not count toward the revocation sanction limits.

Stat. Auth.: ORS 144.107, 144.108, 144.109, 144.120(4), 144.125, 144.232, 144.345, 144.346, 144.395 & 161.735

Stats. Implemented: ORS 144.085, 144.120(4), 144.245, 144.395, 144.780 & 144.783 - 144.787

Hist.: PAR 1-1989(Temp), f. & ef. 4-19-89; PAR 3-1989, f. 10-13-89, ef. 10-16-89; PAR 4-1989, f. & ef. 11-1-89; PAR 6-1990(Temp), f. & cert. ef. 10-15-90; PAR 1-1991, f. & cert. ef. 1-16-91; PAR 8-1992, f. & cert. ef. 10-9-92; PAR 4-1993, f. & cert. ef. 10-29-93; PAR 11-1997(Temp), f. & cert. ef. 11-14-97; PAR 1-1998, f. & cert. ef. 5-11-98; PAR 3-2000, f. & cert. ef. 1-25-00; PAR 2-2003, f. & cert. ef. 5-13-03; PAR 5-2004(Temp), f. & cert. ef. 6-14-04 thru 12-10-04; PAR 11-2004, f. & cert. ef. 11-2-04; PAR 2-2014(Temp), f. & cert. ef. 2-14-14 thru 8-13-14; Temporary suspended by PAR 3-2014(Temp), f. & cert. ef. 2-24-14 thru 8-13-14; PAR 6-2014, f. & cert. ef. 6-19-14

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## Board of Pharmacy Chapter 855

**Rule Caption:** Amends rules in Division 019 and Division 080 relating to FPGEC and Controlled Substances.

**Adm. Order No.:** BP 7-2014

**Filed with Sec. of State:** 6-18-2014

# ADMINISTRATIVE RULES

**Certified to be Effective:** 6-18-14

**Notice Publication Date:** 4-1-2014

**Rules Amended:** 855-019-0150, 855-080-0021

**Subject:** Foreign Pharmacy Graduate rules are permanently amended to remove the minimum score requirements for the Test of English as a Foreign Language (TOEFL) and Internet Based Test (iBT). The amendments require Foreign Pharmacy Graduates applying

for licensure in Oregon to provide the original Foreign Pharmacy Graduate Equivalency Certificate (FPGEC) issued by the National Association of Boards of Pharmacy, Foreign Pharmacy Examination Committee. Note: TOEFL and iBT are required for FPGEC Certification.

This filing also permanently reestablishes as Schedule I items, gamma-butyrolactone and other cannabinoid receptor agonists that are not listed in OARs 855-080-0022 through 0026 (Schedule II through V) or that are not an FDA approved drug. In addition, certain exceptions are reestablished as well as Schedule I compounds in structural classes 2a-2k and their salts. These Schedule I items are being reestablished as a result of administrative errors.

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

## 855-019-0150

### Foreign Pharmacy Graduates

(1) Foreign Pharmacy Graduates applying for licensure in Oregon must meet the following requirements:

(a) Provide a copy of a valid visa permitting full time employment;

(b) Provide the original certificate issued by the NABP Foreign Pharmacy Graduate Examination Committee (FPGEC); and

(c) Pass the North American Pharmacist Licensure Examination (NAPLEX) exam with a score of not less than 75. A candidate who does not attain this score may retake the exam after a minimum of 91 days. This score shall only be valid for one year unless the Board grants an extension;

(d) After having completed the required number of intern hours, pass the MPJE with a score of not less than 75. A candidate who does not attain this score may retake the exam after a minimum of 30 days. The MPJE score shall only be valid for 6 months unless extended by the Board.

(2) An applicant must complete 1440 hours in pharmacy practice as an intern that must be certified to the Board by the preceptors.

(3) An applicant may not count internship hours or practice as a pharmacist completed outside the United States toward Oregon's internship requirement.

(4) An applicant may not count internship hours or practice as a pharmacist that is completed before passing the Foreign Pharmacy Graduate Equivalency Examination (FPGEE), and either the TOEFL with TSE, or TOEFL (IBT) exams toward Oregon's internship requirement.

(5) The Board may waive any requirement of this rule if a waiver will further public health or safety. A waiver granted under this section shall only be effective when it is issued in writing.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.151 & 689.255

Hist.: BP 2-2008, f. & cert. ef. 2-20-08; BP 3-2010, f. 4-29-10, cert. ef. 4-30-10; BP 3-2014(Temp), f. 2-27-14, cert. ef. 2-28-14 thru 8-27-14; BP 7-2014, f. & cert. ef. 6-18-14

## 855-080-0021

### Schedule I

(1) Schedule I consists of the drugs and other substances, by whatever official, common, usual, chemical, or brand name designated, listed in 21CFR part 1308.11, and unless specifically excepted or unless listed in another schedule, any quantity of the following substances, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

(a) 1,4-butanediol;

(b) gamma-butyrolactone

(c) Methamphetamine, except as listed in OAR 855-080-0022;

(d) Substituted derivatives of cathinone and methcathinone that are not listed in OARs 855-080-0022 through 0026 (Schedules II through V) or are not FDA approved drugs, including but not limited to,

(A) Methylnmethcathinone (Mephedrone);

(B) Methylenedioxypropylvalerone (MDPV);

(C) Methylenedioxyethylcathinone (Methylone);

(D) 2-Methylamino-3',4'-(methylenedioxy)-butyrophenone

(Butylone);

(E) Fluoromethcathinone (Flephedrone);

(F) 4-Methoxymethcathinone (Methedrone).

(2) Schedule I also includes any compounds in the following structural classes (2a–2k) and their salts, that are not FDA approved drugs, unless specifically excepted or when in the possession of an FDA registered manufacturer or a registered research facility, or a person for the purpose of sale to an FDA registered manufacturer or a registered research facility:

(a) Naphthoylindoles: Any compound containing a 3-(1-naphthoyl)indole structure with substitution at the nitrogen atom of the indole ring whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent. Examples of this structural class include but are not limited to: JWH-015, JWH-018, JWH-019, JWH-073, JWH-081, JWH-122, JWH-200, JWH-210, AM-1220, MAM-2201 and AM-2201;

(b) Phenylacetylindoles: Any compound containing a 3-phenylacetylindole structure with substitution at the nitrogen atom of the indole ring whether or not further substituted in the indole ring to any extent, whether or not substituted in the phenyl ring to any extent. Examples of this structural class include but are not limited to: JWH-167, JWH-201, JWH-203, JWH-250, JWH-251, JWH-302 and RCS-8;

(c) Benzoylindoles: Any compound containing a 3-(benzoyl)indole structure with substitution at the nitrogen atom of the indole ring whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent. Examples of this structural class include but are not limited to: RCS-4, AM-694, AM-1241, and AM-2233;

(d) Cyclohexylphenols: Any compound containing a 2-(3-hydroxycyclohexyl)phenol structure with substitution at the 5-position of the phenolic ring whether or not substituted in the cyclohexyl ring to any extent. Examples of this structural class include but are not limited to: CP 47,497 and its C8 homologue (cannabicyclohexanol);

(e) Naphthylmethylindoles: Any compound containing a 1H-indol-3-yl-(1-naphthyl)methane structure with substitution at the nitrogen atom of the indole ring whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent;

(f) Naphthoylpyrroles: Any compound containing a 3-(1-naphthoyl)pyrrole structure with substitution at the nitrogen atom of the pyrrole ring whether or not further substituted in the pyrrole ring to any extent and whether or not substituted in the naphthyl ring to any extent;

(g) Naphthylmethylindenes: Any compound containing a 1-(1-naphthylmethyl)indene structure with substitution at the 3-position of the indene ring whether or not further substituted in the indene ring to any extent and whether or not substituted in the naphthyl ring to any extent;

(h) Cyclopropanoylindoles: Any compound containing a 3-(cyclopropylmethanoyl)indole structure with substitution at the nitrogen atom of the indole ring, whether or not further substituted in the indole ring to any extent and whether or not substituted in the cyclopropyl ring to any extent. Examples of this structural class include but are not limited to: UR-144, XLR-11 and A-796,260;

(i) Adamantoylindoles: Any compound containing a 3-(1-adamantoyl)indole structure with substitution at the nitrogen atom of the indole ring, whether or not further substituted in the indole ring to any extent and whether or not substituted in the adamantyl ring to any extent. Examples of this structural class include but are not limited to: AM-1248 and

AB-001;

(j) Adamantylindolecarboxamides: Any compound containing an N-adamantyl-1-indole-3-carboxamide with substitution at the nitrogen atom of the indole ring, whether or not further substituted in the indole ring to any extent and whether or not substituted in the adamantyl ring to any extent. Examples of this structural class include but are not limited to: STS-135 and 2NE1; and

(k) Adamantylindazolecarboxamides: Any compound containing an N-adamantyl-1-indazole-3-carboxamide with substitution at the nitrogen atom of the indazole ring, whether or not further

substituted in the indazole ring to any extent and whether or not substituted in the adamantyl ring to any extent. Examples of this structural class include but are not limited to: AKB48.

(3) Schedule I also includes any other cannabinoid receptor agonist that is not listed in OARs 855-080-0022 through 0026 (Schedules II through V) or is not an FDA approved drug.

(4) Exceptions. The following are exceptions to subsection (1) of this rule:

(a) 1, 4-butanediol and gamma-butyrolactone when in the possession of a person for the purpose of its sale to a legitimate manufacturer of industrial products and the person is in compliance with the Drug Enforcement Administration requirements for List I Chemicals;

# ADMINISTRATIVE RULES

(b) 1,4-butanediol and gamma-butyrolactone when in the possession of a person for the purpose of the legitimate manufacture of industrial products;

(c) Marijuana and delta-9-tetrahydrocannabinol (THC).

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 475.035, 475.059 & 475.065

Hist.: PB 4-1987, f. & ef. 3-30-87; PB 8-1987, f. & ef. 9-30-87; PB 10-1987, f. & ef. 12-8-87; PB 15-1989, f. & cert. ef. 12-26-89; PB 9-1990, f. & cert. ef. 12-5-90; PB 5-1991, f. & cert. ef. 9-19-91; PB 1-1992, f. & cert. ef. 1-31-92 (and corrected 2-7-92); PB 1-1994, f. & cert. ef. 2-2-94; PB 1-1996, f. & cert. ef. 4-5-96; PB 1-1997, f. & cert. ef. 9-22-97; BP 4-2000, f. & cert. ef. 2-16-00; BP 9-2000, f. & cert. ef. 6-29-00; BP 2-2002(Temp), f. & cert. ef. 2-4-02 thru 7-31-02; BP 3-2002(Temp), f. & cert. ef. 3-1-02 thru 8-23-02; BP 4-2002, f. & cert. ef. 6-27-02, cert. ef. 7-1-02; BP 5-2002, f. & cert. ef. 11-14-02; BP 1-2003, f. & cert. ef. 1-14-03; BP 1-2007, f. & cert. ef. 6-29-07; BP 8-2010, f. & cert. ef. 6-29-10; BP 10-2010(Temp), f. & cert. ef. 10-15-10 thru 4-11-11; BP 2-2011, f. & cert. ef. 4-11-11; BP 9-2013, f. & cert. ef. 10-28-13; BP 11-2013(Temp), f. & cert. ef. 12-20-13 thru 6-18-14; BP 4-2014(Temp), f. & cert. ef. 2-27-14, cert. ef. 2-28-14 thru 8-27-14; BP 5-2014(Temp), f. & cert. ef. 4-15-14 thru 8-27-14; BP 7-2014, f. & cert. ef. 6-18-14

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## Bureau of Labor and Industries Chapter 839

**Rule Caption:** Amending rules to implement newly enacted legislation on source of income in housing discrimination.

**Adm. Order No.:** BLI 9-2014

**Filed with Sec. of State:** 7-3-2014

**Certified to be Effective:** 7-3-14

**Notice Publication Date:** 6-1-2014

**Rules Amended:** 839-005-0205

**Subject:** Amendments would add language based on newly enacted legislation to specify that prohibited discrimination in housing based on source of income includes discrimination based on income from federal rent subsidy payments under 42 U.S.C. 1437f, and any other local, state, or federal housing assistance. Amendments also clarify situations in which a person may refuse to sell, lease or rent any real property to a purchaser.

**Rules Coordinator:** Marcia Ohlemiller—(971) 673-0784

### 839-005-0205

#### Prohibited Discrimination

(1) A person may not, because of race, color, religion, sex, sexual orientation, national origin, marital status, disability, familial status, source of income and other classes protected under Oregon statutes of any individual:

(a) Refuse to sell, lease or rent any real property to a purchaser except that a person may refuse to lease or rent real property to a prospective renter or prospective lessee:

(A) Based upon the past conduct of a prospective renter or prospective lessee provided the refusal to lease or rent based on past conduct is consistent with local, state and federal law, including but not limited to fair housing laws; or

(B) Based upon the prospective renter's or prospective lessee's inability to pay rent, taking into account the value of the prospective renter's or prospective lessee's local, state and federal housing assistance, provided the refusal to lease or rent based on inability to pay rent is consistent with local, state and federal law, including but not limited to fair housing laws.

(b) Expel a purchaser from any real property;

(c) Make any distinction, discrimination or restriction against a purchaser in price, terms, conditions or privileges relating to the sale, rental, lease or occupancy of real property or in the furnishing of any facilities or services in connection with real property;

(d) Attempt to discourage the sale, rental, lease or occupancy of any real property to a purchaser;

(e) Publish, circulate, issue or display or cause to be published, circulated, issued or displayed, any communication, notice, advertisement, or sign of any kind whether oral, written or electronic, relating to the sale, rental or leasing of real property that indicates any preference, limitation, specification or unlawful discrimination based on race, color, religion, sex, sexual orientation, national origin, marital status, disability, familial status, source of income and other classes protected under Oregon statutes;

(f) Assist, induce, incite or coerce another person to commit an act or engage in a practice that violates ORS 659A.145, 659A.421, federal housing law or these rules;

(g) Coerce, intimidate, threaten or interfere with any individual in the exercise or enjoyment of, or on account of having exercised or enjoyed, or on account of having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by ORS 659A.145, 659A.421, federal housing law or these rules;

(h) Deny access to, or membership or participation in, any multiple listing service, real estate broker's organization or other service, organization or facility relating to the business of selling or renting dwellings, or discriminate against any individual in the terms or conditions of the access, membership or participation;

(i) Represent to an individual that a dwelling is not available for inspection, sale, rental or lease when the dwelling in fact is available for inspection, sale, rental or lease;

(j) Otherwise make unavailable or deny a dwelling to an individual.

(2) A person whose business includes engaging in residential real estate related transactions may not discriminate against any individual in making a transaction available, or in the terms or conditions of the transaction, because of race, color, religion, sex, sexual orientation, national origin, marital status, disability, familial status, source of income and other classes protected under Oregon statutes.

(3) A real estate licensee may not accept or retain a listing of real property for sale, lease or rental with an understanding that a purchaser may be discriminated against with respect to the sale, rental or lease thereof because of race, color, religion, sex, sexual orientation, national origin, marital status, disability, familial status, source of income and other classes protected under Oregon statutes.

(4) A person may not, for profit, induce or attempt to induce any other person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of an individual or individuals of a particular race, color, religion, sex, sexual orientation, national origin, marital status, disability, familial status, source of income and other classes protected under Oregon statutes.

(5) For purposes of OAR 839-005-0205(1) to (4), "source of income" includes federal rent subsidy payments under 42 U.S.C. 1437f, and any other local, state, or federal housing assistance. "Source of income" does not include income from specific occupations or income derived in an illegal manner.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.103, 659A.142 & 659A.145, 659A.421 & 42 U.S.C. 3601 et seq. H.B. 2639, 77th Leg., Reg. Session (Or. 2013)

Hist.: 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 9-2014, f. & cert. ef. 7-3-14

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## Citizens' Initiative Review Commission Chapter 710

**Rule Caption:** Citizen Initiative Review Elector Stipend and Travel Reimbursement

**Adm. Order No.:** CIRC 2-2014(Temp)

**Filed with Sec. of State:** 6-19-2014

**Certified to be Effective:** 7-1-14 thru 11-30-14

**Notice Publication Date:**

**Rules Adopted:** 710-010-0000

**Subject:** The Citizens Initiative Review Commission sets a daily stipend for Citizen Initiative Review electors; sets the duration of the 2014 CIR panels; and sets travel reimbursement policy.

**Rules Coordinator:** Sarah Giles—(503) 725-5248

### 710-010-0000

#### Citizen Initiative Review Elector Stipend and Travel Reimbursement

According to the duties defined in ORS 250.139(5)(a), the Commission shall compensate each elector for each day served on a panel in the amount of \$100 per day. According to duties defined in 250.139(5)(b), the Commission shall reimburse each elector who serves on a panel for travel expenses in accordance with travel reimbursement policies (mileage, airfare, public transportation costs) as determined by the Oregon Department of Administrative Services. Mileage Reimbursement is therefore set at \$00.56 per mile. Stipends and travel reimbursements would be issued separately in two checks. According to duties defined in 250.139(6)(a), the Commission sets each panel duration for 3.5 days.

Stat. Auth.: ORS 250.139(5)(a), 250.139(5)(b), 250.139(6)(a)

Stats. Implemented: ORS 250.139(5)(a), 250.139(5)(b), 250.139(6)(a)

Hist.: CIRC 2-2014(Temp), f. 6-19-14, cert. ef. 7-1-14 thru 11-30-14

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## Construction Contractors Board Chapter 812

**Rule Caption:** RCE, definition of "casual, minor or inconsequential", penalties, advertising, pre-licensure provider bond, fees, housekeeping

# ADMINISTRATIVE RULES

**Adm. Order No.:** CCB 6-2014

**Filed with Sec. of State:** 6-26-2014

**Certified to be Effective:** 7-1-14

**Notice Publication Date:** 6-1-2014

**Rules Adopted:** 812-003-0142, 812-006-0205, 812-022-0022

**Rules Amended:** 812-002-0120, 812-003-0120, 812-003-0260, 812-003-0340, 812-003-0350, 812-003-0360, 812-003-0370, 812-003-0380, 812-005-0800, 812-006-0200, 812-009-0340, 812-020-0050, 812-020-0055, 812-020-0060, 812-020-0062, 812-020-0065, 812-020-0070, 812-020-0071, 812-020-0072, 812-020-0080, 812-020-0085, 812-020-0087, 812-020-0090, 812-022-0010, 812-022-0015, 812-022-0021

**Rules Repealed:** 812-003-0142(T), 812-006-0200(T), 812-006-0205(T), 812-022-0010(T), 812-022-0021(T), 812-022-0022(T), 812-003-0260(T), 812-003-0340(T), 812-003-0350(T), 812-003-0360(T), 812-003-0370(T), 812-003-0380(T), 812-022-0010(T), 812-022-0022(T)

**Subject:** 812-002-0120 is amended to clarify that “casual, minor or inconsequential” work does not include that which requires a structural permit; to change the word “value” to “aggregate contract price” to clarify that the exemption relates to only one structure or project; and to add language relating to work covered by lead-based paint requirements.

812-003-0120 is amended to exempt permanently attached or affixed signs at business locations that primarily and prominently display the contractor’s name.

812-003-0142 is adopted to replace the previous rule (812-003-0140) that was mistakenly included in a repeal of rules in December 2013. This rule establishes the fees for CCB licensure. The current fees were adopted in January 26, 2010 and became effective 7/1/10 as authorized by the CCB Legislatively Approved Budget (LAB) (budget).

812-003-0260, 812-003-0340, 812-003-0350, 812-003-0360, 812-003-0370, and 812-003-0380 are amended to correct the cite references to the match the new license application fee rule (812-003-0142).

812-005-0800 is amended include reference to OAR 812-003-0280 (renewal or reissue of license), clarify when a contractor must notify CCB of its assumed business name, and to make the penalties match in sections (10) and (11).

812-006-0200 is amended to add a surety bond requirement to pre-licensure provider approvals.

812-006-0205 is adopted to create a surety bond (form) for pre-licensure provider approval.

812-009-0340 is amended to correct cite references and to add a reference to OAR 812-003-0260 that outlines information that an applicant must provide in order to obtain a license.

812-020-0050, 812-020-0055, 812-020-0060, 812-020-0062, 812-020-0065, 812-020-0070, 812-020-0072, 812-020-0080, 812-020-0085, 812-020-0087, and 812-020-0090 are amended to correct cite references (ORS 701.124 was renumbered to 701.086 in 2013).

812-020-0071 is amended to permit commercially endorsed contractors to “count” their RCE hours towards their commercial continuing education requirements. The rule refers to ORS 701.126, which was repealed in 2013. Subsection (1) of the rule allows commercial contractors to use “old” RCE until the end of 2014 (as is permitted for residential contractor renewals). Subsection (2) of the rule corresponds with the new RCE program.

812-022-0010 is amended to extend the period of time to December 31, 2015, during which a contractor may renew their CCB license based upon RCE earned before January 1, 2014; and to clarify that: 1) CCB-LRB substitutes for new CCB-LRB requirements (up to three hours); 2) BEST and Building Codes substitutes for new Series A course requirements (up to five hours); and 3) electives substitute for new Series B course requirements (up to eight hours).

812-022-0015 is amended to provide hours in excess of the three required CCB-LRB hours will be counted towards the 8 hour require-

ment of less experienced residential contractors. Effectively, they will substitute for “Series B” courses.

812-022-0021 is amended to remove references to course substitution and to add exemptions for contractors with a registered architect (owner or officer), and contractors with a licensed professional engineer (owner or officer).

812-022-0022 is adopted to permit a contractor to count any period during which it was licensed towards the six-year requirement to qualify for renewal by completing eight, rather than 16, hours of continuing education, permit contractors to use the experience of its

RMI to qualify for renewal by completing eight, rather than 16 hours of continuing education, and clarifies that the licensing or experience does not need to be continuous.

NOTE: In order to save postage and printing costs in these difficult times, CCB is only providing a copy of the notice. To view the language of each individual rule change, please go to our web site at [http://www.oregon.gov/CCB/Laws\\_Rules.shtml#Administrative\\_Rule\\_Notices](http://www.oregon.gov/CCB/Laws_Rules.shtml#Administrative_Rule_Notices). If you don’t have web access, contact Rules Coordinator Cathy Dixon at (503) 934-2185 for assistance in receiving a copy.

**Rules Coordinator:** Catherine Dixon—(503) 934-2185

## 812-002-0120

### Casual, Minor or Inconsequential

(1) “Casual, minor or inconsequential” as used in ORS 701.010(4) means work:

(a) That does not require a permit;

(b) That does not affect the health or safety of the owner or occupant of the structure;

(c) For which the aggregate contract price for all work on one structure or project is less than \$1,000; and

(d) That does not include work done as a subcontractor to a licensee.

(2) Work involving lead-based paint abatement, inspection, renovation or risk assessment of child-occupied facilities or target housing, as those terms are defined in OAR 812-007-0020, affects the health and safety of owners and occupants and is not “casual, minor or inconsequential” work.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 656.027 & 701.010

Hist.: CCB 4-1998, f. & cert. ef. 4-30-98; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 6-2013, f. 12-19-13, cert. ef. 1-1-14; CCB 6-2014, f. 6-26-14, cert. ef. 7-1-14

## 812-003-0120

### License Required to Advertise

(1) No person shall advertise or otherwise hold out to the public that person’s services as a contractor unless that person holds a current, valid license, nor shall any person claim by advertising or by any other means to be licensed, bonded, or insured unless that person holds a current, valid license.

(2) License number in advertising and contracts:

(a) All newsprint classified advertising and newsprint display advertising for work subject to ORS Chapter 701 prepared by a contractor or at the contractor’s request or direction, shall show the contractor’s license number.

(b) All written bids, written inspection reports and building contracts subject to ORS Chapter 701 shall show the contractor’s license number.

(c) All telephone directory space ads and display ads shall show the contractor’s license number.

(d) All advertisements by audio-only media, such as radio commercials, must contain an audible statement of the contractor’s license number.

(e) All advertisements by video media or video and audio combined media, such as television commercials, must show visually the contractor’s license number.

(f) All advertising by internet media, including but not limited to, website advertising must show visually the contractor’s license number.

(g) All business cards, business letterhead, business signs at construction sites and all other written or visual advertising shall show the contractor’s license number. Written or visual advertising does not include permanently affixed or attached signs at a contractor’s place, or places, of business that primarily and prominently display the contractor’s name.

(h) This section does not apply to a company whose primary business is other than construction and has a Standard Industrial Classification (SIC) code from other than Major Groups 15, 16, and 17.

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(i) This section does not apply to promotional gifts, including, but not limited to, pencils, pens, cups and items of clothing.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.010 & 701.021

Hist.: CCB 9-2004, f. & cert. ef. 12-10-04; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08; CCB 3-2009, f. 5-6-09, cert. ef. 6-1-09; BLI 28-2009, f. 12-1-09, cert. ef. 1-1-10; CCB 6-2014, f. 6-26-14, cert. ef. 7-1-14

## 812-003-0142

### License Application Fees

(1) The application fee for all new, renewal, or reissued licenses is \$325.

(2) Except as provided in section (3) of this rule, application fees will not be refunded.

(3) If a licensee submits an application to renew a license and the agency cannot renew the license because the applicant has formed a new business entity, the agency may refund the renewal application fee, less a \$40 processing fee.

(4)(a) Any licensee in the United States armed forces need not pay a license renewal fee if such fee would be due during the licensee's active duty service.

(b) A licensee in the United States armed forces shall pay the next license renewal fee that will become due after the licensee is discharged from active duty service.

(c) The agency may request that the licensee provide documentation of active duty status and of discharge.

(d) Section (4) of this rule applies to licensees that are sole proprietors or partners in a general partnership.

Stat. Auth.: ORS 670.310, 701.238 & 701.235

Stats. Implemented: ORS 701.056, 701.063 & 701.238

Hist.: CCB 4-2014(Temp), f. & cert. ef. 5-5-14 thru 10-31-14; CCB 6-2014, f. 6-26-14, cert. ef. 7-1-14

## 812-003-0260

### Application for New License

(1) Each entity must complete an application form prescribed by the agency. Information provided on the form must include, but not be limited to:

(a) Name of business entity, all additional business names, including assumed business names, under which business as a contractor is conducted, and Corporation Division registry numbers (if applicable);

(b) Mailing and location address of the business entity;

(c) Legal name and address (which may be the business address) of:

(A) The owner of a sole proprietorship;

(B) All partners of a general partnership or limited liability partnership;

(C) All joint venturers of a joint venture;

(D) All general partners of a limited partnership;

(E) All corporate officers of a corporation;

(F) All trustees of a trust;

(G) The manager and all members of a manager-managed limited liability company, and, if one or more of the members is a partnership, limited liability partnership, joint venture, limited partnership, corporation, trust or limited liability company, the general partners, venturers, corporate officers, trustees, managers or members of the entity that is a member of the limited liability company that is the subject of this paragraph;

(H) All members of a member-managed limited liability company, and, if one or more of the members is a partnership, limited liability partnership, joint venture, limited partnership, corporation, trust or limited liability company, the general partners, venturers, corporate officers, trustees, managers or members of the entity that is a member of the limited liability company that is the subject of this paragraph; or

(I) The responsible managing individual designated by the applicant.

(d) Except for a public company, the date of birth and driver license number of:

(A) The owner of a sole proprietorship;

(B) All partners of a general partnership or limited liability partnership;

(C) All joint venturers of a joint venture;

(D) All general partners of a limited partnership;

(E) All corporate officers of a corporation;

(F) All trustees of a trust;

(G) The manager and all members of a manager-managed limited liability company, and, if one or more of the members is a partnership, limited liability partnership, joint venture, limited partnership, corporation, trust or limited liability company, the general partners, venturers, corporate officers, trustees, managers or members of the entity that is a member of the limited liability company that is the subject of this paragraph;

(H) All members of a member-managed limited liability company, and, if one or more of the members is a partnership, limited liability partnership, joint venture, limited partnership, corporation, trust or limited liability company, the general partners, venturers, corporate officers, trustees, managers or members of the entity that is a member of the limited liability company that is the subject of this paragraph; or

(I) The responsible managing individual designated by the applicant.

(J) For purposes of this subsection, a "public company" means any business entity that offers securities registered for sale by the federal Securities and Exchange Commission to the general public.

(e) Social security number of the owner of a sole proprietorship or partners, if partners are human beings, in a general partnership;

(f) Class of independent contractor license and employer account numbers as required under OAR 812-003-0250;

(g) License endorsement sought, as provided for under OAR 812-003-0131;

(h) The identification number of the responsible managing individual who has completed the education and passed the examination required under ORS 701.122 or is otherwise exempt under division 6 of these rules;

(i) The Standard Industrial Classification (SIC) numbers of the main construction activities of the entity;

(j) Names and certification numbers of all certified locksmiths if the entity is a Residential Locksmith Services Contractor or will do work providing locksmith services under ORS 701.475 to 701.490;

(k) Names and certification numbers of all certified home inspectors if the entity will do work as a home inspector under ORS 701.350;

(l) Names and certification numbers of all certified home energy assessors if the entity is a Home Energy Performance Score Contractor providing home energy performance scores under ORS 701.527 to 701.536 or will do work providing home energy performance scores.

(m) For each person described in subsection (1)(c) of this section, the following information if related to construction activities:

(A) If unsatisfied on the date of application, a copy of a final judgment by a court in any state entered within five years preceding the application date that requires the person to pay money to another person or to a public body;

(B) If unsatisfied on the date of application, a copy of a final order by an administrative agency in any state issued within five years preceding the application date that requires the person to pay money to another person or public body;

(C) If pending on the date of application, a copy of a court complaint filed in any state that alleges that the person owes money to another person or public body; or

(D) If pending on the date of application, a copy of an administrative notice of action issued in any state that alleges that the person owes money to another person or public body.

(n) For each person described in subsection (1)(c) of this section, the following information if related to construction activities:

(A) A copy of a judgment of conviction for a crime listed in ORS 701.098(1)(i), entered within five years preceding the application date; or

(B) A copy of an indictment for a crime listed in ORS 701.098(1)(i), entered within five years preceding the application date.

(C) In addition to documents required in paragraphs (1)(l)(A) and (B) of this section, copies of police reports, parole or probation reports indicating parole or probation officer's name and phone number, and letters of reference.

(o) Independent contractor certification statement and a signed acknowledgment that if the licensee qualifies as an independent contractor the licensee understands that the licensee and any heirs of the licensee will not qualify for workers' compensation or unemployment compensation unless specific arrangements have been made for the licensee's insurance coverage and that the licensee's election to be an independent contractor is voluntary and is not a condition of any contract entered into by the licensee;

(p) Signature of owner, partner, joint venturer, corporate officer, member or trustee, signifying that the information provided in the application is true and correct; and

(2) A complete license application includes but is not limited to:

(a) A completed application form as provided in section (1) of this rule;

(b) The new application license fee as required under OAR 812-003-0142;

(c) A properly executed bond, letter of credit or assignment of savings as required under OAR 812-003-0152, 812-003-0153, or 812-003-0155; and

# ADMINISTRATIVE RULES

(d) The certification of insurance coverage as required under OAR 812-003-0200.

(3) The agency may return an incomplete license application to the applicant with an explanation of the deficiencies.

(4) All entities listed in section (1) of this rule that are otherwise required to be registered with the Oregon Corporation Division must be registered with the Oregon Corporation Division and be active and in good standing. All assumed business names used by persons or entities listed in section (1) of this rule must be registered with the Oregon Corporation Division as the assumed business name of the person or entity using that name.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 25.270, 25.785, 25.990, 701.035, 701.050, 701.056, 701.068, 701.073, 701.081, 701.088 & 701.122

Hist.: CCB 9-2004, f. & cert. ef. 12-10-04; CCB 3-2005, f. & cert. ef. 8-24-05; CCB 6-2006, f. 5-25-06, cert. ef. 6-1-06; CCB 8-2006, f. & cert. ef. 9-5-06; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07; CCB 6-2007, f. 8-29-07, cert. ef. 9-1-07; CCB 7-2007, f. 12-13-07, cert. ef. 1-1-08; CCB 5-2008, f. 2-29-08, cert. ef. 7-1-08; CCB 6-2008, f. & cert. ef. 3-24-08; CCB 8-2008, f. 4-28-08, cert. ef. 7-1-08; CCB 12-2008, f. 6-30-08, cert. ef. 7-1-08; CCB 16-2008, f. 9-26-08, cert. ef. 10-1-08; CCB 6-2013, f. 12-19-13, cert. ef. 1-1-14; CCB 3-2014, f. & cert. ef. 4-30-14; CCB 4-2014(Temp), f. & cert. ef. 5-5-14 thru 10-31-14; CCB 6-2014, f. 6-26-14, cert. ef. 7-1-14

## 812-003-0340

### Inactive Status Request at Renewal

(1) A request to convert a license to inactive status made at the time of renewal of the license must be accompanied by fees required under OAR 812-003-0142.

(2) If a license is converted to inactive status at the time of renewal of the license, the effective date of the renewed license shall be the expiration date of the previous license. An inactive license, if renewed, shall expire two years after its effective date.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.063

Hist.: CCB 9-2004, f. & cert. ef. 12-10-04; CCB 5-2008, f. 2-29-08, cert. ef. 7-1-08; CCB 4-2014(Temp), f. & cert. ef. 5-5-14 thru 10-31-14; CCB 6-2014, f. 6-26-14, cert. ef. 7-1-14

## 812-003-0350

### Inactive Status Request at Interim Renewal Period

(1) A request to convert a license to inactive status made prior to the expiration date of the license, but at a time other than the time of renewal of the license, will be accepted only if the licensee making the request has paid all applicable fees required under OAR 812-003-0142 and 812-003-0320.

(2) If a license is converted to inactive status prior to the expiration date of the license but at a time other than the time of renewal of the license, the effective dates of the license will remain unchanged and the license will expire at the upcoming expiration date.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.063

Hist.: CCB 9-2004, f. & cert. ef. 12-10-04; CCB 2-2005, f. 6-29-05, cert. ef. 7-1-05; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08; CCB 4-2014(Temp), f. & cert. ef. 5-5-14 thru 10-31-14; CCB 6-2014, f. 6-26-14, cert. ef. 7-1-14

## 812-003-0360

### Inactive Status Request after Lapse

(1) A request to renew a license and convert it to inactive status made after a lapse due to the expiration of the license must be accompanied by fees required under OAR 812-003-0142.

(2) If a license is renewed and converted to inactive status after a lapse due to expiration of the license, the agency will establish the effective date of the license. An inactive license, if renewed, shall expire two years after its effective date.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.063

Hist.: CCB 9-2004, f. & cert. ef. 12-10-04; CCB 5-2008, f. 2-29-08, cert. ef. 7-1-08; CCB 4-2014(Temp), f. & cert. ef. 5-5-14 thru 10-31-14; CCB 6-2014, f. 6-26-14, cert. ef. 7-1-14

## 812-003-0370

### Renewal of Inactive Status

To renew an inactive license in an inactive status:

(1) If the licensee was subject to discipline by the agency, the licensee must satisfy any conditions imposed by the agency as a result of the discipline;

(2) The licensee must submit the request to renew the license in inactive status on forms provided by the agency; and

(3) The licensee must submit the fees required under OAR 812-003-0142.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.056 & 701.063

Hist.: CCB 9-2004, f. & cert. ef. 12-10-04; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08; CCB 4-2014(Temp), f. & cert. ef. 5-5-14 thru 10-31-14; CCB 6-2014, f. 6-26-14, cert. ef. 7-1-14

## 812-003-0380

### Converting From Inactive Back to Active Status

(1) To convert from an inactive status to an active status, the licensee must:

(a) Submit a request to convert to an active status on forms provided by the agency; and

(b) Comply with section (3), (4) or (5) of this rule as applicable.

(2) A licensee requesting conversion from an inactive status to an active status at the time of renewal must:

(a) Submit the fees required under OAR 812-003-0142;

(b) Submit the required surety bond, or letter of credit, or cash deposit, and general liability insurance for the category requested; and

(c) Comply with all other licensing requirements prescribed by the Board.

(3) A licensee requesting conversion from an inactive status to an active status at a time other than renewal and prior to the expiration date of the license must:

(a) Submit all fees to date as required by OAR 812-003-0142 and 812-003-0320;

(b) Submit the required surety bond, or letter of credit, or cash deposit, and general liability insurance for the category requested; and

(d) Comply with all other licensing requirements prescribed by the Board.

(4) A licensee requesting conversion from an inactive status to an active status during a lapse due to the expiration of the license must:

(a) Request the conversion within two years from the date of lapse;

(b) Comply with all licensing requirements prescribed by the Board;

(c) Submit the required surety bond, or letter of credit, or cash deposit, and general liability insurance for the category requested; and

(d) Submit all fees required under OAR 812-003-0142.

(5) If a license is converted from an inactive to an active status, the agency shall establish the effective date of the license.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.056, 701.063 & 701.088

Hist.: CCB 9-2004, f. & cert. ef. 12-10-04; CCB 2-2005, f. 6-29-05, cert. ef. 7-1-05; CCB 7-2007, f. 12-13-07, cert. ef. 1-1-08; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08; CCB 4-2014(Temp), f. & cert. ef. 5-5-14 thru 10-31-14; CCB 6-2014, f. 6-26-14, cert. ef. 7-1-14

## 812-005-0800

### Schedule of Penalties

The agency may assess penalties, not to exceed the amounts shown in the following guidelines:

(1) \$600 for advertising or submitting a bid to do work as a contractor in violation of ORS 701.021 and OAR 812-003-0120, which may be reduced to \$200 if the respondent becomes licensed or to \$50 if the advertisement or bid is withdrawn immediately upon notification from the agency that a violation has occurred and no work was accepted as a result of the advertisement or bid; and

(2) \$700 per offense without possibility of reduction for advertising or submitting a bid to do work as a contractor in violation of ORS 701.021 and OAR 812-003-0120, when one or more previous violations have occurred, or when an inactive, lapsed, invalid, or misleading license number has been used; and

(3) \$1,000 per offense for performing work as a contractor in violation of ORS 701.021 when the Board has no evidence that the person has worked previously without having a license and no consumer has suffered damages from the work, which may be reduced to \$700 if the respondent becomes licensed within a specified time; and

(4)(a) \$5,000 per offense for performing work as a contractor in violation of ORS 701.021, when an owner has filed a complaint for damages caused by performance of that work, which may be reduced to \$700 if the contractor becomes licensed within a specified time and settles or makes reasonable attempts to settle with the owner.

(b) A "complaint for damages" as used in section (4) of this rule includes, but is not limited to:

(A) A Construction Contractors Board Dispute Resolution Services (DRS) complaint; or

(B) A letter to Construction Contractors Board indicating that a citizen has been damaged by the contractor; and

(5) \$5,000 per offense for performing work as a contractor in violation of ORS 701.021, when one or more violations have occurred, or when an inactive, lapsed, invalid, or misleading license number has been used; and

(6) \$500 per offense for failure to respond to the agency's request for the list of subcontractors required in ORS 701.345; and

(7) \$1,000 per offense for hiring a unlicensed subcontractor; and

## ADMINISTRATIVE RULES

(8) For failing to provide an "Information Notice to Owners about Construction Liens" as provided in ORS 87.093, when no lien has been filed, \$200 for the first offense, \$400 for the second offense, \$600 for the third offense, \$1,000 for each subsequent offense. Any time a lien has been filed upon the improvement, \$1,000.

(9) Failure to include license number in advertising or on contracts, in violation of OAR 812-003-0120: First offense \$100, second offense \$200, subsequent offenses \$400.

(10) Failure to list with the Construction Contractors Board a business name under which business as a contractor is conducted in violation of OAR 812-003-0260 or 812-003-0280: First offense \$50, second offense \$100, subsequent offenses \$200.

(11) Failure to notify the Construction Contractors Board of a new or additional business name or personal surname (for sole proprietors) under which business as a contractor is conducted, in violation of 812-003-0320: First offense \$50, second offense \$100, subsequent offenses \$200.

(12) Failing to use a written contract as required by ORS 701.305: \$500 for the first offense; \$1,000 for the second offense; and \$5,000 for subsequent offenses.

(13) Violation of OAR 812-012-0130(1), failure to provide a Consumer Notification form; \$100 first offense; \$500 second offense; \$1,000 third offense; and \$5,000 for subsequent offenses. Civil penalties shall not be reduced unless the agency determines from clear and convincing evidence that compelling circumstances require a suspension of a portion of the penalty in the interest of justice. In no event shall a civil penalty for this offense be reduced below \$100.

(14) Failure to conform to information provided on the application in violation of ORS 701.046(5), issuance of a \$5,000 civil penalty, and suspension of the license until the contractor provides the agency with proof of conformance with the application and the terms of the application.

(a) If the violator is a limited contractor or residential limited contractor working in violation of the conditions established pursuant to OAR 812-003-0130 or 812-003-0131, the licensee shall be permanently barred from licensure in the limited contractor category or residential limited contractor endorsement.

(b) If the violator is a licensed developer, residential developer or commercial developer working in violation of the conditions established pursuant to ORS 701.005(3), (6) or (14) or 701.042, the licensee shall be permanently barred from licensure in the licensed developer category or residential developer or commercial developer endorsement.

(15) Knowingly assisting an unlicensed contractor to act in violation of ORS Chapter 701, \$1,000.

(16) Failure to comply with any part of ORS Chapters 316, 656, or 657 or with ORS 701.035, 701.046 or 701.091, \$1,000 and suspension of the license until the contractor provides the agency with proof of compliance with the statute.

(17) Violating an order to stop work as authorized by ORS 701.225(6), \$1,000 per day.

(18) Working without a construction permit in violation of ORS 701.098, \$1,000 for the first offense; \$2,000 and suspension of CCB license for three (3) months for the second offense; \$5,000 and permanent revocation of CCB license for the third and subsequent offenses.

(19) Failure to comply with an investigatory order issued by the Board, \$500 and suspension of the license until the contractor complies with the order.

(20) Violation of ORS 701.098(1)(l) by engaging in conduct as a contractor that is dishonest or fraudulent and injurious to the welfare of the public: first offense, \$1,000, suspension of the license or both; second and subsequent offenses, \$5,000, per violation, revocation or suspension of the license until the fraudulent conduct is mitigated in a manner satisfactory to the agency or both.

(21) Engaging in conduct as a contractor that is dishonest or fraudulent and injurious to the welfare of the public by:

(a) Not paying prevailing wage on a public works job; or

(b) Violating the federal Davis-Bacon Act; or

(c) Failing to pay minimum wages or overtime wages as required under state and federal law; or

(d) Failing to comply with the payroll certification requirements of ORS 279C.845; or

(e) Failing to comply with the posting requirements of ORS 279C.840:

\$1,000 and suspension of the license until the money required as wages for employees is paid in full and the contractor is in compliance with the appropriate state and federal laws.

(22) Violation of ORS 701.098(1)(l) by engaging in conduct as a contractor that is dishonest or fraudulent and injurious to the welfare of the public, as described in sections (20) or (21), where more than two violations have occurred: \$5,000 and revocation of the license.

(23) When, as set forth in ORS 701.098(1)(h), the number of licensed contractors working together on the same task on the same job site, where one of the contractors is licensed exempt under 701.035(2)(b), exceeded two sole proprietors, one partnership, or one limited liability company, penalties shall be imposed on each of the persons to whom the contract is awarded and each of the persons who award the contract, as follows: \$1,000 for the first offense, \$2,000 for the second offense, six month suspension of the license for the third offense, and three-year revocation of license for a fourth offense.

(24) Performing home inspections without being an Oregon certified home inspector in violation of OAR 812-008-0030(1): \$5,000.

(25) Using the title Oregon certified home inspector in advertising, bidding or otherwise holding out as a home inspector in violation of OAR 812-008-0030(3): \$5,000.

(26) Failure to conform to the Standards of Practice in violation of OAR 812-008-0202 through 812-008-0214: \$750 per offense.

(27) Failure to conform to the Standards of Behavior in OAR 812-008-0201(2)-(4): \$750 per offense.

(28) Offering to undertake, bidding to undertake or undertaking repairs on a structure inspected by an owner or employee of the business entity within 12 months following the inspection in violation of ORS 701.355: \$5,000 per offense.

(29) Failure to include certification number in all written reports, bids, contracts, and an individual's business cards in violation of OAR 812-008-0202(4): \$400 per offense.

(30) Violation of work practice standards for lead-based paint (LBP) activity pursuant to OAR 812-007-0140 or 812-007-0240 first offense, \$1,000; second offense, \$3,000; and third offense, \$5,000 plus suspension of license for up to one year. The civil penalty is payable to the Construction Contractors Board LBP Activities Fund as provided in ORS 701.995 and OAR 812-007-0025.

(31) Violation of work practice standards for LBP renovation pursuant to OAR 812-007-0340 or violation of recordkeeping and reporting requirements pursuant to OAR 333-070-0110: first offense, \$1,000; second offense, \$3,000; and third offense, \$5,000 and suspension of the certified LBP renovation contractor license for up to one year. The civil penalty is payable to the Construction Contractors Board LBP Activities Fund as provided in ORS 701.995 and OAR 812-007-0025.

(32) Violation of OAR 812-007-0100, 812-007-0200 or 812-007-0300: first offense, \$1,000; second offense, \$3,000; and third offense, \$5,000. The civil penalty is payable to the Construction Contractors Board Lead-Based Paint (LBP) Activities Fund as provided in ORS 701.995 and OAR 812-007-0025.

(33) Violation of ORS 279C.590:

(a) Imposition of a civil penalty on the contractor of up to ten percent of the amount of the subcontract bid submitted by the complaining subcontractor to the contractor or \$15,000, whichever is less; and

(b) Imposition of a civil penalty on the contractor of up to \$1,000; and

(c) Placement of the contractor on a list of contractors not eligible to bid on public contracts established to ORS 701.227(4), for a period of up to six months for a second offense if the offense occurs within three years of the first offense.

(d) Placement of the contractor on a list of contractors not eligible to bid on public contracts established to ORS 701.227(4), for a period of up to one year for a third or subsequent offense if the offense occurs within three years of the first offense.

(34) Violation of ORS 701.315, inclusion of provisions in a contract that preclude a homeowner from filing a breach of contract complaint with the Board: \$1,000 for the first offense, \$2,000 for the second offense, and \$5,000 for the third and subsequent offenses.

(35) Violation of ORS 701.345, failure to maintain the list of subcontractors: \$1,000 for the first offense; \$2,000 for the second offense, and \$5,000 for the third and subsequent offenses.

(36) Violation of 701.098(1)(f), knowingly providing false information to the Board: \$1,000 and suspension of the license for up to three months for the first offense; \$2,000 and suspension of the license for up to one year for the second offense; and \$5,000 and permanent revocation of license for the third offense.

(37) Failing to provide a written contract with the contractual terms provided by ORS 701.305 or OAR 812-012-0110: \$200 for the first offense; \$500 for the second offense; and \$1,000 for subsequent offenses.

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(38) Working while the license is suspended if the licensee was required to provide an increased bond under ORS 701.068(5), 701.068(6), or OAR 812-003-0175: revocation.

(39) Working while the license is suspended for any violation of ORS 701.098(4)(a)(A) or 701.098(4)(a)(B): \$5,000 for first offense, and revocation for second or subsequent offense.

(40) Working while the license is suspended for any reason except as otherwise provided for by this rule: revocation.

(41) Failure to comply with ORS 701.106(1)(a); \$1,000 for the first offense, \$5,000 for the second offense; \$5,000 and permanent revocation of CCB license for the third offense.

(42) Failure to deliver as required by ORS 701.109(2) a copy of a final judgment; \$200 first offense, \$400 second offense; \$600 for the third offense; \$1,000 for each subsequent offense.

(43) Failure to maintain insurance as required under ORS 701.073 or to provide proof of insurance as required under OAR 812-003-0200, where there is no claim of loss submitted to the insurance company: first offense, \$500; second offense, \$1,000; third and subsequent offenses, \$5,000.

(44) Failure to maintain insurance as required under ORS 701.073 or to provide proof of insurance as required under OAR 812-003-0200, where there is a claim of loss submitted to the insurance company: first offense, \$2,000; second and subsequent offenses, \$5,000.

(45) Undertaking, offering to undertake, or submitting a bid to work as a locksmith when an individual is not certified as a locksmith or otherwise exempt under ORS 701.490: first offense, \$1,000; second offense, \$3,000; third offense, \$5,000.

(46) Undertaking, offering to undertake, or submitting a bid to provide locksmith services when a business is not a licensed construction contractor or otherwise exempt under ORS 701.490: first offense, \$1,000; second offense, \$3,000; third offense, \$5,000.

(47) Using the title of locksmith, locksmith professional, commercial locksmith, lock installer or any title using a form of the word "locksmith" that indicates or tends to indicate that the individual is a locksmith, unless an individual is certified as a locksmith or otherwise exempt under ORS 701.490: first offense, \$1,000; second offense, \$3,000; third offense, \$5,000.

(48) Using the title of locksmith, locksmith professional, commercial locksmith, lock installer or any title using a form of the word "locksmith" that indicates or tends to indicate that the business providing locksmith services, unless a business: (a) is a licensed construction contractor, and (b) is owned by or employs a certified locksmith or is otherwise exempt under ORS 701.490: first offense, \$1,000; second offense, \$3,000; third offense, \$5,000.

(49) Violating any applicable provision of the rules in division 30, including violating any standard of professional conduct other than OAR 812-030-0300(4): first offense, \$1,000; second offense, \$3,000; third offense, \$5,000 and revocation of the certificate.

(50) Violating OAR 812-030-0300(4): first offense, \$200; second offense, \$500; third offense, \$1,000.

Stat. Auth.: ORS 183.310 to 183.500, 670.310, 701.235, 701.515, 701.992 & 701.995  
Stats. Implemented: ORS 87.093, 279C.590, 701.005, 701.021, 701.026, 701.042, 701.046, 701.073, 701.091, 701.098, 701.106, 701.109, 701.227, 701.305, 701.315, 701.330, 701.345, 701.480, 701.485, 701.510, 701.515, 701.992 & 701.995  
Hist.: IBB 4-1982, f. & ef. 10-7-82; IBB 1-1983, f. & ef. 3-1-83; Renumbered from 812-011-0080(13); IBB 3-1983, f. 10-5-83, ef. 10-15-83; IBB 3-1984, f. & ef. 5-11-84; IBB 3-1985, f. & ef. 4-25-85; BB 1-1987, f. & ef. 3-5-87; BB 1-1988(Temp), f. & cert. ef. 1-26-88; BB 2-1988, f. & cert. ef. 6-6-88; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 2-1990, f. 5-17-90, cert. ef. 6-1-90; CCB 3-1990(Temp), f. & cert. ef. 7-27-90; CCB 4-1990, f. 10-30-90, cert. ef. 11-1-90; CCB 3-1991, f. 9-26-91, cert. ef. 9-29-91; CCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; CCB 2-1992, f. & cert. ef. 4-15-92; CCB 4-1992, f. & cert. ef. 6-1-92; CCB 5-1993, f. 12-7-93, cert. ef. 12-8-93; CCB 2-1994, f. 12-29-94, cert. ef. 1-1-95; CCB 3-1995, f. 9-7-95, cert. ef. 9-9-95; CCB 4-1995, f. & cert. ef. 10-5-95; CCB 3-1996, f. & cert. ef. 8-13-96; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 7-1999(Temp), f. & cert. ef. 11-1-99 thru 4-29-00; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 13-2000(Temp), f. & cert. ef. 11-13-00 thru 5-11-01; CCB 2-2001, f. & cert. ef. 4-6-01; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 1-2002(Temp), f. & cert. ef. 3-1-02 thru 8-26-02; CCB 2-2002, f. & cert. ef. 3-1-02; CCB 7-2002, f. 6-26-02, cert. ef. 7-1-02; CCB 8-2002, f. & cert. ef. 9-3-02; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 6-2004, f. 6-25-04, cert. ef. 9-1-04; CCB 9-2004, f. & cert. ef. 12-10-04; CCB 5-2005, f. 8-24-05, cert. ef. 1-1-06; Renumbered from 812-005-0005, CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06; CCB 2-2006, f. & cert. ef. 1-26-06; CCB 7-2006, f. & cert. ef. 6-23-06; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07; CCB 4-2007, f. 6-28-07, cert. ef. 7-1-07; CCB 2-2008(Temp), f. & cert. ef. 1-2-08 thru 6-29-08; CCB 5-2008, f. 2-29-08, cert. ef. 7-1-08; CCB 13-2008, f. 6-30-08, cert. ef. 7-1-08; CCB 17-2008, f. 9-26-08, cert. ef. 10-1-08; CCB 19-2008, f. & cert. ef. 11-20-08; CCB 1-2009, f. 1-30-09, cert. ef. 2-1-09; CCB 4-2009, f. 5-6-09, cert. ef. 6-1-09; CCB 6-2009, f. & cert. ef. 9-1-09; CCB 2-2010, f. & cert. ef. 2-1-10; CCB 8-2010, f. & cert. ef. 4-28-10; CCB 13-2010(Temp), f. & cert. ef. 7-7-10 thru 1-2-11; Administrative correction 1-25-11; CCB 1-2011, f. 2-28-11, cert. ef. 3-1-11; CCB 4-2011, f. 6-24-11, cert. ef. 7-1-11; CCB 10-2011, f. 9-29-11, cert. ef. 10-1-11; CCB 16-2011, f. 12-13-11, cert. ef. 1-1-12; CCB 3-2012, f. & cert. ef. 3-2-12; CCB 6-2012, f. 4-25-12, cert. ef. 5-1-12; CCB 6-2014, f. 6-26-14, cert. ef. 7-1-14

## 812-006-0200

### Pre-Licensure Training Provider Approval

(1) No pre-licensure training shall meet the requirements of ORS 701.122 unless it is offered by a pre-licensure training provider approved by the agency.

(2) To receive agency approval, individuals and organizations shall make application and sign an agreement with the agency prior to offering the pre-licensure training.

(3) The pre-licensure training provider application shall include, but will not be limited to, provisions for:

(a) Recording the name, address, contact information, and name of responsible administrator of the pre-licensure training provider.

(b) Submitting trainer resumes or work summaries that demonstrate that all its trainers have at least four years work experience or four years education, or any combination of both, in subject areas that they instruct as outlined in the Oregon Contractors Reference Manual.

(4) No pre-licensure training provider may offer or provide any pre-licensure training until there is a fully executed agreement between the pre-licensure training provider and the agency.

(5) No pre-licensure training provider may offer or provide any pre-licensure training if, at the time of offering or providing the pre-licensure training, the pre-licensure training provider is an RMI of a licensee.

(6) A pre-licensure training provider must comply at all times with the following requirements:

(a) The pre-licensure training provider will provide 16-hours of training under OAR 812-006-0150.

(b) The pre-licensure training provider will verify that each student taking the pre-licensure training has a current agency-approved manual.

(c) The pre-licensure training provider will use agency-approved curriculum and the agency-approved Oregon Contractors Reference Manual.

(d) The pre-licensure training provider will send electronic records of completion to the agency in a format approved by the agency and keep records of completion for a minimum of six years.

(e) The pre-licensure training provider will communicate law changes and program procedural changes received from the agency to the pre-licensure training provider's trainers and will implement these changes within 30 business days.

(f) The pre-licensure training provider will use only approved trainers who have at least four years work experience or four years education, or any combination of both, in the subject that they instruct as outlined in the Oregon Contractors Reference Manual. CCB will not approve as a trainer any individual who, at the time of offering or providing the pre-licensure training, is an RMI of a licensee.

(g) The pre-licensure training provider will request and receive, in writing, agency approval of all trainers at least 10 business days before trainers are scheduled to teach.

(h) The pre-licensure training provider will provide a mechanism for students to contact their trainer(s) outside of class for a minimum of one hour per week for 90 days from date of enrollment.

(i) The pre-licensure training provider will give all students information about how to contact trainers and hours of availability before the end of the pre-licensure training.

(j) The pre-licensure training provider will comply with all applicable federal and state laws.

(k) Except as provided in OAR 812-006-0205(2), the pre-licensure training provider will obtain and maintain a surety bond as described in 812-006-0205 in the amount of \$10,000 obligating the surety to pay the State of Oregon for the benefit of third-parties.

(7) The agency may publicize a pre-licensure training provider's test passage rate for its students.

(8) The agency may revoke a pre-licensure training provider's right to offer training and terminate the agreement of a pre-licensure training provider at any time the pre-licensure training provider fails to:

(a) Meet any requirement of the agreement; or

(b) Comply with these rules.

(9) The agency may revoke a pre-licensure training provider's right to offer pre-licensure training and terminate the agreement of a pre-licensure training provider:

(a) Whose students do not pass the agency test on their first attempt at least 70 percent of the time after the pre-licensure training provider has provided pre-licensure training for at least three months, or whose students fail to maintain the 70 percent first attempt test passing rate during the remaining period of the agreement; or

(b) Who acquires or attempts to acquire agency test questions by unauthorized means, including but not limited to, photographing, photo-

# ADMINISTRATIVE RULES

copying or videotaping any part of the agency's test or paying or offering incentives to individuals or business entities to write down, photograph or videotape any part of the agency's test.

Stat. Auth.: ORS 670.310, 701.122 & 701.235  
Stats. Implemented: ORS 701.122

Hist.: CCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 4-2003, f. & cert. ef. 6-3-03; CCB 1-2005(Temp), f. & cert. ef. 1-5-05 thru 7-1-05; CCB 2-2005, f. 6-29-05, cert. ef. 7-1-05; CCB 3-2005, f. & cert. ef. 8-24-05; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06; CCB 7-2006, f. & cert. ef. 6-23-06; Renumbered from 812-006-0030, CCB 10-2006, f. 9-5-06, cert. ef. 10-1-06; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08; CCB 20-2008, f. & cert. ef. 11-20-08; CCB 1-2013, f. 4-30-13, cert. ef. 5-1-13; CCB 5-2014(Temp), f. & cert. ef. 5-5-14 thru 10-31-14; CCB 6-2014, f. 6-26-14, cert. ef. 7-1-14

## 812-006-0205

### Surety Bond to Assure Performance of Agency Agreements

(1) Providers approved under OAR 812-006-0200 will maintain a surety bond in the amount of \$10,000, issued by a surety company authorized to do business in the State of Oregon, for the benefit of the State of Oregon, Construction Contractors Board. The bond must be in the form "Approved Pre-Licensure Training Provider Surety Bond," dated June 24, 2014.

(2) Section (1) of this rule does not apply to Oregon public community colleges or small business development centers (including BizCenter Online Learning).

Stat. Auth.: ORS 670.310, 701.122 & 701.235  
Stats. Implemented: ORS 701.122

Hist.: CCB 5-2014(Temp), f. & cert. ef. 5-5-14 thru 10-31-14; CCB 6-2014, f. 6-26-14, cert. ef. 7-1-14

## 812-009-0340

### Agency Representation by Officer or Employee

(1) Subject to the approval of the Attorney General as provided in ORS 183.452, agency officers and employees may appear, but not make legal argument, on behalf of the agency in the following types of hearings conducted by the agency:

(a) Hearings involving the possible imposition of civil penalties for violations of statutes or regulations;

(b) Hearings involving refusals to issue, reissue or renew, or suspensions, which will be lifted upon correction of a deficiency, payment of a penalty or payment of a construction debt, based upon:

- (A) ORS 701.098(4)(a)(A) (no bond);
- (B) ORS 701.098(4)(a)(B) (no insurance);
- (C) ORS 701.098(4)(a)(F) (unpaid construction debt);
- (D) ORS 701.102 (unpaid construction debt);
- (E) ORS 701.106, where the violation is based on a final order issued by:

(i) Department of Consumer and Business Services, Building Codes Division;

(ii) Department of Consumer and Business Services, Workers' Compensation Division;

(iii) Department of Consumer and Business Services, Oregon-OSHA,

(iv) Employment Department;

(v) Department of Revenue; or

(vi) Landscape Contractors Board.

(F) Failure to pay an outstanding obligation, as required by OAR 812-005-0280(2);

(G) Failure to obtain or maintain an increased bond, as required by ORS 701.068(5) or (6).

(H) Failure to provide information as required under ORS 701.046 and OAR 812-003-0260.

(2) The agency representative may not make legal argument on behalf of the agency.

(a) "Legal argument" includes argument on:

(A) The jurisdiction of the agency to hear the contested case;

(B) The constitutionality of a statute or rule or the application of a constitutional requirement to an agency; and

(C) The application of court precedent to the facts of the particular contested case proceeding.

(b) "Legal argument" does not include presentation of motions, evidence, examination and cross-examination of witnesses or presentation of factual argument or arguments on:

(A) The application of the statutes or rules to the facts in the contested case;

(B) Comparison of prior actions of the agency in handling similar situations;

(C) The literal meaning of the statute or rules directly applicable to the issues in the contested case;

(D) The admissibility of evidence;

(E) The correctness of procedures being followed in the contested case hearing.

Stat. Auth.: ORS 183.310 - 183.550, 670.310 & 701.235

Stats. Implemented: ORS 183.450

Hist.: BB 3-1987, f. 12-30-87, cert. ef. 1-1-88; CCB 5-1993, f. 12-7-93, cert. ef. 12-8-93; CCB 1-1994, f. 6-23-94, cert. ef. 7-1-94; Renumbered from 812-001-0006, CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08; CCB 4-2010(Temp), f. & cert. ef. 2-3-10 thru 8-1-10; CCB 7-2010, f. & cert. ef. 4-28-10; CCB 6-2014, f. 6-26-14, cert. ef. 7-1-14

## 812-020-0050

### Authority, Purpose, and Scope of Rules — Continuing Education for Commercial Contractors

(1) Authority. These rules are promulgated in accordance with ORS 670.310(1) and 701.086, which authorize CCB to adopt rules to administer a continuing education system for commercial contractors.

(2) Purpose. The purpose of these rules is to further explain and detail the requirements for continuing education under ORS 701.086.

(3) Scope. These rules establish:

(a) Procedures for commercial contractors to report continuing education hours;

(b) Sanctions for commercial contractors failing to comply; and

(c) Processes for prorating requirements.

Stat. Auth.: ORS 670.310, 701.124 & 701.235

Stats. Implemented: 701.124

Hist.: CCB 21-2008, f. & cert. ef. 11-20-08; CCB 6-2014, f. 6-26-14, cert. ef. 7-1-14

## 812-020-0055

### Definitions — Continuing Education for Commercial Contractors

The following definitions apply to OAR 812-020-0050 to 812-020-0073:

(1) "Building code" means a specialty code as defined in ORS 455.010(7).

(2) "Commercial contractor" means a licensed contractor as defined under ORS 701.005(2).

(3) "Inactive commercial contractor" means a commercial contractor that has voluntarily placed its license in inactive status in accordance with OAR 812-003-0330 to 812-003-0370 and has not converted the license back to active status in accordance with ORS 812-003-0380.

(4) "Lapse in license" has the meaning given that term by OAR 812-002-0420.

(5) "License period" means the two-year period from the date a contractor's license is first issued or last renewed until the date the license is next scheduled to expire.

Stat. Auth.: ORS 670.310, 701.124 & 701.235

Stats. Implemented: 701.124

Hist.: CCB 21-2008, f. & cert. ef. 11-20-08; CCB 9-2010(Temp), f. & cert. ef. 5-18-10 thru 11-12-10; CCB 14-2010, f. 8-24-10, cert. ef. 9-1-10; CCB 6-2014, f. 6-26-14, cert. ef. 7-1-14

## 812-020-0060

### Effective Date — Continuing Education for Commercial Contractors

OAR 812-020-0050 to 812-020-0073 and the amendment to OAR 812-003-0280(2) take effect upon passage, and apply to commercial contractors that renew their licenses on and after July 1, 2010.

Stat. Auth.: ORS 670.310, 701.124 & 701.235

Stats. Implemented: 701.124

Hist.: CCB 21-2008, f. & cert. ef. 11-20-08; CCB 6-2014, f. 6-26-14, cert. ef. 7-1-14

## 812-020-0062

### Exemptions — Continuing Education for Commercial Contractors

(1) Commercial contractors subject to regulation under ORS 479.510 to 479.945 or 480.510 to 480.670 or ORS chapter 693 do not need to satisfy the continuing education requirements. These contractors include, but are not limited to:

(a) Electrical contractors subject to regulation under ORS 479.510 to 479.945.

(b) Plumbing contractors subject to regulation under ORS Chapter 693.

(c) Boiler contractor subject to regulation under ORS 480.510 to 480.670.

(d) Elevator contractors subject to regulation under ORS 479.510 to 479.945.

(e) Renewable energy contractors subject to regulation under ORS 479.510 to 479.945.

(f) Pump installation contractors subject to regulation under ORS 479.510 to 479.945.

(g) Limited sign contractors subject to regulation under ORS 479.510 to 479.945.

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(2) Commercial contractors endorsed only as commercial developers do not need to satisfy the continuing education requirements.

(3) If, during the two years immediately preceding the expiration date of the license, a commercial contractor served on active duty in the United States armed forces, including but not limited to mobilization or deployment, the continuing education requirement is waived for that two-year period. This exemption applies only if the commercial contractor is a:

- (a) Sole proprietor;
- (b) Sole owner of a corporation; or
- (c) Sole member of a limited liability company.

Stat. Auth.: ORS 670.310, 701.124 & 701.235

Stats. Implemented: 701.124

Hist.: CCB 21-2008, f. & cert. ef. 11-20-08; CCB 7-2009, f. 11-30-09, cert. ef. 1-1-10; CCB 6-2014, f. 6-26-14, cert. ef. 7-1-14

## 812-020-0065

### Minimum Requirements — Continuing Education for Commercial Contractors

(1) Commercial contractors shall have a key employee, or combination of key employees, who complete continuing education.

(2) Education hours may be earned by attending offerings provided by any of the following:

- (a) Post-secondary institutions such as colleges or universities;
- (b) Trade schools;
- (c) Trade associations;
- (d) Professional societies;
- (e) Private companies;
- (f) Public agencies;
- (g) Business associations; or
- (h) Contractor-provided in-house training programs.

(3) Courses shall be a minimum of one clock hour to qualify for one hour of continuing education credit.

(4) Credit shall not be applied for the same key employee repeating the same continuing education course during a two-year period.

Stat. Auth.: ORS 670.310, 701.124 & 701.235

Stats. Implemented: 701.124

Hist.: CCB 21-2008, f. & cert. ef. 11-20-08; CCB 6-2014, f. 6-26-14, cert. ef. 7-1-14

## 812-020-0070

### Certification of Hours — Continuing Education for Commercial Contractors

(1) Upon renewal, a commercial contractor must certify that one or more key employees obtained the continuing education required by OAR 812-020-0050 to 812-020-0073.

(2) For a commercial general or specialty contractor — level 1 with five or more key employees, the commercial contractor must certify that one or more key employees completed at least 80 hours during the preceding license period.

(3) For a commercial general or specialty contractor — level 1 with four or fewer key employees, the commercial contractor must certify as follows:

- (a) With four key employees, that one or more key employees completed at least 64 hours during the preceding license period.
- (b) With three key employees, that one or more key employees completed at least 48 hours during the preceding license period.
- (c) With two key employees, that one or more key employees completed at least 32 hours during the preceding license period.
- (d) With one key employee, that the key employee completed at least 16 hours during the preceding license period.

(4) For a commercial general or specialty contractor — level 2, the commercial contractor must certify that one or more key employees completed at least 32 hours during the preceding license period.

(5) For purposes of this rule, the required amount of continuing education hours for the renewing contractor is determined based on the contractor's endorsement status as of the previous date of license issuance, reissuance or renewal. If the contractor was not endorsed as a commercial contractor on the previous date, continuing education does not apply.

(6) For purposes of this rule, if a contractor is subject to the continuing education requirement, the number of key employees is the number of such persons employed by the commercial contractor as of the previous date of license issuance, reissuance or renewal as a commercial contractor.

Stat. Auth.: ORS 670.310, 701.124 & 701.235

Stats. Implemented: 701.124

Hist.: CCB 21-2008, f. & cert. ef. 11-20-08; CCB 1-2009, f. 1-30-09, cert. ef. 2-1-09; CCB 1-2010, f. & cert. ef. 2-1-10; CCB 6-2014, f. 6-26-14, cert. ef. 7-1-14

## 812-020-0071

### Hours Earned as Residential Contractor — Continuing Education for Commercial Contractors

(1) Until December 31, 2015, a commercial contractor also endorsed as a residential contractor may take credit for continuing education earned under ORS 701.126 and OAR division 21 before January 1, 2014.

(2) A commercial contractor also endorsed as a residential contractor may take credit for continuing education earned under ORS 701.082 and OAR division 22.

Stat. Auth.: ORS 670.310, 701.082 & 701.235

Stats. Implemented: ORS 701.082

Hist.: CCB 5-2009, f. 6-25-09, cert. ef. 7-1-09; CCB 3-2014, f. & cert. ef. 4-30-14; CCB 6-2014, f. 6-26-14, cert. ef. 7-1-14

## 812-020-0072

### Recordkeeping and Review — Continuing Education for Commercial Contractors

(1) Every commercial contractor shall maintain records of its key employees' participation in continuing education activities for a period no less than 24 months after the renewal date.

(2) The agency may request any commercial contractor's continuing education records for review.

(3) If a commercial contractor cannot prove that the commercial contractor's key employees completed the continuing education, the agency may suspend the license until the commercial contractor proves compliance or the commercial contractor's key employees complete the missing courses.

Stat. Auth.: ORS 670.310, 701.124 & 701.235

Stats. Implemented: 701.124

Hist.: CCB 21-2008, f. & cert. ef. 11-20-08; CCB 6-2014, f. 6-26-14, cert. ef. 7-1-14

## 812-020-0080

### Inactive Commercial Contractor — Continuing Education for Commercial Contractors

If a commercial contractor's license is placed in an inactive status during any part of the license period, the commercial contractor needs only complete the continuing education hours for the period the license was active. The continuing education hours required under OAR 812-020-0070 will be prorated for the period that the license was active. For example, if a commercial contractor is inactive 6 months during the license period (inactive 25% of the time), the contractor needs to certify completion of 75% of the hours otherwise required.

Stat. Auth.: ORS 670.310, 701.124 & 701.235

Stats. Implemented: 701.124

Hist.: CCB 21-2008, f. & cert. ef. 11-20-08; CCB 6-2014, f. 6-26-14, cert. ef. 7-1-14

## 812-020-0085

### Lapse in License — Continuing Education for Commercial Contractors

If a license expires and is not renewed for a period not exceeding one year, the commercial contractor may seek renewal and backdating of the license. To renew the license, the commercial contractor must certify that it has satisfied the continuing education requirements either during the license period or during the lapse in license period, or both.

Stat. Auth.: ORS 670.310, 701.124 & 701.235

Stats. Implemented: 701.124

Hist.: CCB 21-2008, f. & cert. ef. 11-20-08; CCB 6-2014, f. 6-26-14, cert. ef. 7-1-14

## 812-020-0087

### Courses Completed by Key Employees — Continuing Education for Commercial Contractors

A commercial contractor may certify continuing education hours based upon courses completed by its key employees; provided that a key employee was employed by the commercial contractor when he or she completed a course. If a commercial contractor employs a key employee who completed continuing education course(s) before being hired by the commercial contractor, the commercial contractor may not include those hours to certify that it satisfied the continuing education requirement.

Stat. Auth.: ORS 670.310, 701.124 & 701.235

Stats. Implemented: 701.124

Hist.: CCB 21-2008, f. & cert. ef. 11-20-08; CCB 6-2014, f. 6-26-14, cert. ef. 7-1-14

## 812-020-0090

### Key Employee of More than One Commercial Contractor — Continuing Education for Commercial Contractors

If a key employee who completes a continuing education course is employed by more than one commercial contractor when the course is completed, each commercial contractor may include those hours to certify that it satisfied the continuing education requirement.

Stat. Auth.: ORS 670.310, 701.124 & 701.235

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Stats. Implemented: 701.124  
Hist.: CCB 21-2008, f. & cert. ef. 11-20-08; CCB 17-2010, f. 12-22-10, cert. ef. 1-1-11; CCB 6-2014, f. 6-26-14, cert. ef. 7-1-14

## 812-022-0010

### Effective Date — Continuing Education for Residential Contractors (SB 783)

(1) OAR 812-022-0000 to 812-022-0047 apply to residential contractors:

(a) That have active, non-lapsed licenses that expire on or after January 1, 2014.

(b) That renew lapsed licenses with expiration dates on or after January 1, 2014.

(c) That renew lapsed licenses with expiration dates before January 1, 2014, but that are renewed on or after January 1, 2014.

(2) Notwithstanding section (1), until December 31, 2015, a residential contractor may apply hours earned from attending the courses, completed during the licensing period immediately preceding January 1, 2014, towards the new residential continuing education requirements regardless of whether the courses would qualify under the new law. These courses may include the following.

(a) Construction Contractor Board laws, regulations and business practices (up to three hours). Hours earned will be applied towards the three hours of Construction Contractor Board laws, regulations and business practices required for the new residential continuing education.

(b) Building codes courses approved by CCB before January 1, 2014, (up to two hours). Hours earned will be applied towards the five hours of Series A courses required for the new residential continuing education.

(c) Building Exterior Shell Training (BEST) (up to three hours). Hours earned will be applied towards the five hours of Series A courses required for the new residential continuing education.

(d) Elective courses. Hours earned will be applied towards the eight hours of Series B courses required for the new residential continuing education for contractors licensed less than six years.

(3) Notwithstanding section (1), a residential contractor renewing a license on or after January 1, 2014, that expired before October 1, 2013, must complete three hours of BEST and two hours of building code courses. The BEST and building code course hours will substitute for required Series A Course hours.

(4) Notwithstanding section (1), a residential contractor renewing a license on or after January 1, 2014, which expired between October 1, 2013, and December 31, 2013, must complete two hours of building code course. The hours will substitute for required Series A Course hours.

(5) Notwithstanding OAR 812-021-0028(7) and (8), providers approved pursuant to 812-021-0025 or 812-022-0025 may continue to offer BEST or building codes courses previously approved by CCB under 812-021-0028 without submitting additional application or fees for provider or course approval.

(6) Notwithstanding section (1), a contractor renewing its license between January 1, 2014, and March 31, 2014, may elect to renew the license pursuant to OAR 812-021-0015 rather than renewing its license pursuant to this rule. A contractor making this election will need to maintain record of the continuing education courses it completes to satisfy 812-021-0015 for which the provider does not otherwise submit notification of completion of core hours.

Stat. Auth.: ORS 670.310, 701.082, 701.126, 701.235

Stats. Implemented: ORS 701.082

Hist.: CCB 2-2013, f. & cert. ef. 10-24-13; CCB 3-2013(Temp), f. & cert. ef. 10-29-13 thru 4-26-14; CCB 1-2014, f. & cert. ef. 2-6-14; CCB 2-2014(Temp), f. & cert. ef. 3-26-14 thru 9-22-14; CCB 6-2014, f. 6-26-14, cert. ef. 7-1-14

## 812-022-0015

### Minimum Continuing Education Requirements — Continuing Education for Residential Contractors (SB 783)

(1) Except as provided in section (3), residential contractors shall have an owner, officer, RMI or employee, or a combination of those persons, who complete a minimum of eight hours of continuing education every licensing period as described in sections (2) and (3).

(2) Residential continuing education hours consist of the following:

(a) Three hours of education on laws, regulations and business practices offered by the agency or by an approved provider under an agreement with the agency; and

(b) Five hours of Series A Courses, approved by the agency and offered by approved providers, in one or more of the following subjects:

(A) Construction business practices;

(B) Marketing;

(C) Customer service;

(D) Accounting;

(E) Business law;

(F) Bidding;

(G) Building Codes; or

(H) Safety.

(3) Residential contractors that have not been licensed as a residential contractor during any part of the six-years immediately preceding their scheduled renewal date must complete an additional eight hours of residential continuing education offered by an approved provider. The education hours may include:

(a) Series A Courses described in section (2)(b);

(b) Series B Courses in one or more of the following subjects:

(A) Energy efficiency; or

(B) Trade specific subjects, such as roofing, excavation, or exterior shell construction, as selected by the contractor; or

(c) Courses in excess of three hours of education on laws, regulations and business practices offered by the agency, or by an approved provider under an agreement with the agency, as described in section (2)(a).

(4) Courses shall be a minimum of 50 minutes to qualify for one hour of residential continuing education credit. Courses shall be at least one credit hour.

(5) Credit shall not be given for an individual student repeating the same residential continuing education course during a two-year licensing period.

(6) If, during the two years immediately preceding the expiration date of the license, a residential contractor served on active duty in the United States armed forces, including but not limited to mobilization or deployment, the residential continuing education requirement is waived for that two-year licensing period. This exemption applies only if the residential contractor is a:

(a) Sole proprietor without employees;

(b) Sole owner of a corporation; or

(c) Sole member of a limited liability company.

Stat. Auth.: ORS 670.310, 701.082, & 701.235

Stats. Implemented: ORS 701.082

Hist.: CCB 2-2013, f. & cert. ef. 10-24-13; CCB 4-2013(Temp), f. & cert. ef. 11-26-13 thru 5-23-14; CCB 1-2014, f. & cert. ef. 2-6-14; CCB 6-2014, f. 6-26-14, cert. ef. 7-1-14

## 812-022-0021

### Exemptions from Continuing Education — Continuing Education for Residential Contractors (SB 783)

The following contractors are exempt from continuing education requirements as required by OAR division 22:

(1) Contractors licensed as plumbing contractors under ORS 447.010 to 447.156;

(2) Contractors licensed as electrical contractors under ORS 479.630;

(3) Contractors owned by, or having an officer who is, an architect registered under ORS 671.010 to 671.220; and

(4) Contractors owned by, or having an officer who is, a professional engineer licensed under ORS 672.002 to 672.325

Stat. Auth.: ORS 670.310, 701.082, 701.083, & 701.235

Stats. Implemented: ORS 701.082, 701.083

Hist.: CCB 2-2013, f. & cert. ef. 10-24-13; CCB 4-2013(Temp), f. & cert. ef. 11-26-13 thru 5-23-14; CCB 1-2014, f. & cert. ef. 2-6-14; CCB 2-2014(Temp), f. & cert. ef. 3-26-14 thru 9-22-14; CCB 6-2014, f. 6-26-14, cert. ef. 7-1-14

## 812-022-0022

### Experience Exemptions from Continuing Education — Continuing Education for Residential Contractors (SB 783)

(1) Notwithstanding ORS 701.082(2), if a contractor was licensed for at least six years before the contractor's renewal date, the contractor may qualify for renewal by completing eight hours of continuing education as provided in ORS 701.082(1).

(2) Notwithstanding ORS 701.082(2), if a contractor's RMI was an RMI for any contractor for at least six years before the contractor's renewal date, the contractor may qualify for renewal by completing eight hours of continuing education as provided in ORS 701.082(1).

(3) The licensing for the contractor or experience for the RMI does not need to be continuous.

Stat. Auth.: ORS 670.310, 701.08, 701.235

Stats. Implemented: ORS 701.082, 701.265

Hist.: CCB 2-2014(Temp), f. & cert. ef. 3-26-14 thru 9-22-14; CCB 6-2014, f. 6-26-14, cert. ef. 7-1-14

# ADMINISTRATIVE RULES

## Department of Agriculture Chapter 603

**Rule Caption:** Prohibits use of dinotefuran or imidacloprid on linden and other *Tilia* spp. trees.

**Adm. Order No.:** DOA 8-2014(Temp)

**Filed with Sec. of State:** 6-26-2014

**Certified to be Effective:** 6-26-14 thru 12-23-14

**Notice Publication Date:**

**Rules Adopted:** 603-057-0387

**Subject:** It is prohibited to apply dinotefuran or imidacloprid, regardless of application method, to linden, basswood or other *Tilia* species.

**Rules Coordinator:** Sue Gooch—(503) 986-4583

### 603-057-0387

#### Dinotefuran or Imidacloprid

(1) It is prohibited to apply any product containing dinotefuran or imidacloprid, regardless of application method, to linden trees, basswood trees or other *Tilia* species.

(2) Failure to comply with section (1) above may result in one or more of the following actions:

(a) Revocation, suspension or refusal to issue or renew the license or certification of an applicant, licensee or certificate holder;

(b) Imposition of a civil penalty;

(c) Any other enforcement action authorized under any law.

Stat. Auth.: ORS 561.020, 634.322(6), 634.900 & ORS 183

Stats. Implemented: ORS 634

Hist.: DOA 8-2014(Temp), f. & cert. eff. 6-26-14 thru 12-23-14

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**Rule Caption:** Protecting Willamette Valley Agriculture from Blackleg, a Seed-Borne Plant Disease.

**Adm. Order No.:** DOA 9-2014(Temp)

**Filed with Sec. of State:** 7-7-2014

**Certified to be Effective:** 7-7-14 thru 1-3-15

**Notice Publication Date:**

**Rules Amended:** 603-052-0882

**Subject:** The rapeseed production district rules in OAR 603-052-0860 - 0921 establish a control area for Brassica spp. including rapeseed and provide the conditions for the production of Brassica spp. and rapeseed to protect against plant diseases that may constitute a menace to the horticultural, agricultural or forest industries. Passage of HB 2427 (2013) [Oregon Laws Chapter 724, [published as a note following ORS 570.450] replaced previously existing administrative rules governing rapeseed production that assisted in preventing the introduction and spread of “blackleg” a plant disease caused by the fungus *Phoma lingam* that infects the seeds of Brassica crops. 2013 Oregon Laws Chapter 724 does not address treatment of seed to prevent the seed-borne disease known as blackleg. Blackleg has recently been discovered infecting field crops within the Willamette Valley Protected District area described in HB 2427, 2013 Oregon Laws Chapter 724. OSU and ODA Plant Pathologists believe uncertified, untreated seed is the cause of this outbreak. This temporary rule requires that seeds of susceptible crops be tested and certified as free from blackleg or the seed stock be treated with a fungicide or suitable alternative treatment prior to planting and management measures be implemented in known infected fields. The crops impacted include: Brassica (broccoli, Brussels sprouts, cabbage, canola, cauliflower, Chinese Brassica vegetables, collards, kales, mizuna, mustards, oilseed rape, oilseed turnip rape, rutabaga, turnip, etc), Raphanus (daikon or radish), and Sinapis (white and yellow mustard).

**Rules Coordinator:** Sue Gooch—(503) 986-4583

### 603-052-0882

#### Willamette Valley Protected District

(1) In addition to the provisions governing canola in the Willamette Valley Protected District as provided in 2013 Oregon Laws Chapter 724, the following rules preventing the introduction and spread of blackleg are applicable within the Willamette Valley Protected District as that district is described in HB 2427 (2013).

(2) As authorized by OAR 183.335(5)(6), the Department establishes a temporary rule to protect Willamette Valley crops against blackleg, a plant

disease caused by *Phoma lingam* (= *Leptosphaeria maculans*). This temporary rule is established under ORS 561.190 and 570.405 to protect Oregon’s agricultural seed and oilseed industries from the artificial spread of blackleg in the Willamette Valley. This seed-borne disease causes mortality in all ages of susceptible host species within the family Brassicaceae, including but not limited to the following genera, *Brassica*, *Raphanus*, *Sinapis*, *Sisymbrium*, *Descurainia*, *Rorippa*, and *Thlaspi*.

(3) Commodities covered. All seed and plants of susceptible species within the family Brassicaceae, including *Brassica* (broccoli, Brussels sprouts, cabbage, canola, cauliflower, Chinese Brassica vegetables, collards, kales, mizuna, mustards, oilseed rape, oilseed turnip rape, rutabaga, turnip, etc.), *Raphanus* (daikon or radish), and *Sinapis* (white and yellow mustard). Exemption: Prepackaged seed lots of *Brassica*, *Raphanus*, and *Sinapis* of one-half (0.5) ounce or less and transplants for home use are exempt from the requirements of this rule.

(4) Provisions of temporary rule. All lots of the covered commodities intended for entry or for commercial planting within the Willamette Valley Protected District are prohibited from planting within the District unless they meet the conditions below:

(a) All seed stock of covered commodities must meet one of the following conditions:

(A) Be accompanied by a certificate stating that the untreated seed is free from blackleg (*Leptosphaeria maculans*, asexual stage = *Phoma lingam*) based on official sampling and testing. Alternatively, a seed lot that initially tests positive for blackleg by official testing must be treated in a manner approved by the Department for blackleg control and the treatment officially documented; or,

(B) The seed lot must be treated in a manner approved by the Department for blackleg control and records documenting said treatment provided to the Department upon request.

(b) All plants of covered commodities intended for transplanting for commercial production must be certified as having originated from seed stock that was found free of blackleg based on official testing or was treated prior to planting with a method that has been approved by the Department for blackleg control.

(5) The following management practices are required to prevent buildup of blackleg, blackrot, and other diseases and pests:

(a) Covered commodities may not be grown on the same plot of land in two consecutive years and not more than two years in every five.

(b) Any volunteer or uncontrolled Brassicaceae in or around production fields must be rogued out or otherwise eliminated by the producer.

(c) All planting, harvest, and transportation equipment shall be cleaned to prevent any inadvertent spread of covered commodities from the field.

(d) All unbagged loads of covered commodities transported within the Protected District must be in enclosed bins or in containers lined and covered in a manner to prevent seed loss.

(6) Seed dealers and producers are required to maintain all pertinent records in accordance with Oregon Revised Statutes 633.511 to 633.750 and to make these records available to the Department upon request. Similarly, seed dealers and producers are required to maintain all pertinent records of seed treatment as described in OAR 603-056-0431 and to make these records available to the Department upon request.

(7) Special permits: The Department, upon receipt of an application in writing, may issue a special permit allowing research on blackleg disease within this Protected District on regulated commodities not otherwise eligible for such under the provisions of this quarantine order. Research on blackleg disease on such commodities will be subject to any conditions or restrictions stipulated in the permit and these conditions and restrictions may vary depending upon the intended research on the commodity and the potential risk of escape or spread of *Leptosphaeria maculans* (= *Phoma lingam*).

(8) Violations. Violation of this temporary rule is a Class A violation as provided by ORS 570.410 and 570.990. Violators may also be subject to civil penalties of up to \$10,000 as provided by ORS 570.995. Covered commodities shipped into or planted in violation of this temporary rule may be treated, destroyed or returned to their point of origin without expense or indemnity paid by the state.

(9) This temporary rule shall be effective upon filing with the Secretary of State’s office for 180 days unless terminated, amended, or replaced by an amended version of OAR-052-0860 to 0921.

**NOTE:** A map of the Willamette Valley Protected District is available on the ODA website at: <<http://www.oregon.gov/ODA/pages/canola.aspx>>

Stat. Auth.: ORS 561.190, 570.305, 570.405, 570.412, 570.415 & 570.450

Stats. Implemented: 2013 HB 2427, ORS 570.305, 570.405, 570.410, 570.412, 570.415 & 570.450

# ADMINISTRATIVE RULES

Hist.: DOA 1-2013, f. & cert. ef. 2-6-13; DOA 11-2013, f. & cert. ef. 10-21-13; DOA 9-2014(Temp), f. & cert. ef. 7-7-14 thru 1-3-15

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**Rule Caption:** Prohibits use of dinotefuran or imidacloprid on linden and other *Tilia* spp. trees.

**Adm. Order No.:** DOA 10-2014(Temp)

**Filed with Sec. of State:** 7-8-2014

**Certified to be Effective:** 7-8-14 thru 1-3-15

**Notice Publication Date:**

**Rules Adopted:** 603-057-0387

**Subject:** It is prohibited to apply dinotefuran or imidacloprid, regardless of application method, to linden, basswood or other *Tilia* species.

**Rules Coordinator:** Sue Gooch—(503) 986-4583

## 603-057-0387

### Dinotefuran or Imidacloprid

(1) It is prohibited to apply any product containing dinotefuran or imidacloprid, regardless of application method, to linden trees, basswood trees or other *Tilia* species.

(2) Failure to comply with section (1) above may result in one or more of the following actions:

(a) Revocation, suspension or refusal to issue or renew the license or certification of an applicant, licensee or certificate holder;

(b) Imposition of a civil penalty;

(c) Any other enforcement action authorized under any law.

Stat. Auth.: ORS 561.020, 634.322(6), 634.900 & ORS 183

Stats. Implemented: ORS 634

Hist.: DOA 8-2014(Temp), f. & cert. ef. 6-26-14 thru 12-23-14; DOA 10-2014(Temp), f. & cert. ef. 7-8-14 thru 1-3-15

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## Department of Agriculture, Oregon Sheep Commission Chapter 644

**Rule Caption:** Change assessed commodity to sheep (per head basis); modify handler definition, collection process, commissioner qualifications

**Adm. Order No.:** SHEEP 1-2014

**Filed with Sec. of State:** 6-30-2014

**Certified to be Effective:** 7-1-14

**Notice Publication Date:** 6-1-2014

**Rules Amended:** 644-010-0005, 644-010-0010, 644-010-0015, 644-010-0020, 644-010-0025, 644-030-0020

**Subject:** These rules implement the provisions of Senate Bill 719 (2013) that changed the assessed commodity for the Oregon Sheep Commission from wool to a per head assessment on any sheep produced and sold in the State regardless of the disposition of the sheep and regardless of whether the sale is a casual sale. References to wool are deleted and new assessment rate of 50 cents per head of sheep sold is established. Rules are modified to broaden the definition of handler to anyone who buys and receives sheep from the producer in the first instance. The handler is responsible for remitting the assessment on a quarterly basis to the Commission. In those instances where a producer markets his/her sheep directly to the consumer or processor, the producer will remit the assessment. These rules follow the collection process utilized by the American Lamb Board for the national assessment. If the handler is receiving sheep for resale, the assessment is deducted from the producer's proceeds and this amount is forwarded to the subsequent purchaser, generally the out of state processor, who remits the assessment to the Oregon Sheep Commission.

Due to the declining number of producers in certain regions of the state and fewer qualified handlers, these rules reduce the number of handler positions from two to one, with the remaining position to be filled by a producer. Regional qualifications for producer membership on the Commission are removed.

**Rules Coordinator:** Richard Kosesan—(503) 370-7024

## 644-010-0005

### Definitions

The following definitions will apply to division 10 and division 30 Administrative Rules of the Oregon Sheep Commission.

(1) "Person" means any individual, group of individuals, corporation, association, partnership, joint stock company, or any other legal entity.

(2) "Commission" means the Oregon Sheep Commission.

(3) "Handler" means any processor, distributor, auction market, or other person engaged in handling or marketing sheep, whether as owner, agent, employee, broker, or otherwise, who buys sheep from a producer and receives sheep in the first instance from a producer for resale or processing.

(4) "Producer" means any person, as defined in OAR 644-010-0005(1), who raises, breeds, and produces sheep for sale, including anyone who markets sheep or sheep products of that person's own production directly to consumers.

(5) "Sheep" means an animal of the ovine species, regardless of age, including rams and ewes.

Stat. Auth.: ORS 576

Stats. Implemented: ORS 576

Hist.: SC 2, f. 12-20-77, ef. 1-1-78; SHEEP 1-2004, f. & cert. ef. 1-8-04; SHEEP 1-2014, f. 6-30-14, cert. ef. 7-1-14

## 644-010-0010

### Assessments

(1) Each handler making payment to a producer shall deduct an assessment of \$0.50 per head from the sale of each live sheep sold by the producer, including any sheep that has been fed or grazed in Oregon for at least 30 consecutive days during the preceding 12 months prior to the date of sale, and remit the assessment of \$0.50 per head to the Oregon Sheep Commission at quarterly intervals as defined by OAR 644-010-0015(1). If the handler is receiving sheep for resale, the assessment shall be forwarded to subsequent purchaser. The assessment will be remitted by the final handler at time of final harvest.

(2) Each person processing or causing to be processed sheep of that person's own production shall pay an assessment at the rate of \$0.50 per head to the Oregon Sheep Commission for each live sheep sold for slaughter or custom processing. The assessment shall be remitted to the Commission at quarterly intervals as defined by OAR 644-010-0015(1).

(3) A producer who markets sheep to an out-of-state handler is responsible to remit the assessment of \$0.50 per head to the Commission as required by ORS 576.345, unless the subsequent purchaser voluntarily agrees to deduct the assessment of \$0.50 per head from the proceeds owed to the producer and to remit to the Oregon Sheep Commission as specified under OAR 644-010-0015.

Stat. Auth.: ORS 576

Stats. Implemented: ORS 576.304(2) & 576.325(4)(f)

Hist.: SC 2, f. 12-20-77, ef. 1-1-78; SC 1-1985, f. & ef. 11-20-85; SHEEP 1-2004, f. & cert. ef. 1-8-04; SHEEP 1-2005, f. 12-15-05 cert. ef. 1-1-06; SHEEP 1-2006, f. 12-12-06, cert. ef. 1-1-07; SHEEP 1-2010(Temp), 12-15-10, cert. ef. 1-1-11 thru 3-31-11; SHEEP 1-2011, f. & cert. ef. 2-14-11; SHEEP 1-2014, f. 6-30-14, cert. ef. 7-1-14

## 644-010-0015

### Reports and Payment of Assessment Moneys

(1) Handlers shall remit collected assessments on a quarterly basis, with a completed and signed assessment report on commission approved forms. The information specified in OAR 644-010-0015(3) may be provided in a separate printed report, if accompanied by a signed commission approved assessment form. Assessment reports shall include all purchases by or deliveries to a handler of sheep. Quarterly assessment reports are due in the commission office postmarked on or before the 10th day of the month following the end of the quarter. Quarterly assessments shall be reported as follows.

(a) January, February, March assessments report must be postmarked on or before April 10th;

(b) April, May, June assessments report must be postmarked on or before July 10th;

(c) July, August, September assessments report must be postmarked on or before October 10th;

(d) October, November, December assessments report must be postmarked on or before January 10th.

(2) If the producer sells, ships, or otherwise disposes of sheep to any person outside Oregon, the producer shall deduct the assessment of \$0.50 per head from the proceeds owed to the producer and remit to the Commission at quarterly intervals as specified in OAR 644-010-0015(1).

(3) Each person collecting the assessment must provide to the person from whom the assessment was deducted a receipt including:

(a) Name and address of the person collecting the assessment,

(b) Date of sale,

(c) Name and address of the person who paid the assessment,

(d) Number of head of sheep sold, and

(e) Total assessment paid by the producer.

Stat. Auth.: ORS 576

# ADMINISTRATIVE RULES

Stats. Implemented: ORS 576  
Hist.: SC 2, f. 12-20-77, ef. 1-1-78; SHEEP 1-2003, f. & cert. ef. 1-6-03; SHEEP 1-2004, f. & cert. ef. 1-8-04; SHEEP 1-2014, f. 6-30-14, cert. ef. 7-1-14

## 644-010-0020

### Penalties

(1) A handler who delays transmittal of funds to the Commission beyond the time specified in OAR 644-010-0015(1) shall pay a penalty of 10 percent of the amount due and shall also pay one and one-half percent interest per month on the unpaid balance of the assessment.

(2) By majority vote, the Commission may waive or adjust penalties for good cause or if the assessment is deemed uncollectible.

Stat. Auth.: ORS 576  
Stats. Implemented: ORS 576  
Hist.: SC 2, f. 12-20-77, ef. 1-1-78; SHEEP 1-2004, f. & cert. ef. 1-8-04; SHEEP 1-2014, f. 6-30-14, cert. ef. 7-1-14

## 644-010-0025

### Effective Dates of Assessment

The assessment to be withheld and paid by a handler, processor, distributor, auction market, or other person engaged in handling or marketing sheep shall begin with sheep purchased or sold on or after July 1, 2014.

Stat. Auth.: ORS 576  
Stats. Implemented: ORS 576  
Hist.: SC 2, f. 12-20-77, ef. 1-1-78; SHEEP 1-2004, f. & cert. ef. 1-8-04; SHEEP 1-2014, f. 6-30-14, cert. ef. 7-1-14

## 644-030-0020

### Qualifications of Commissioners

(1) For purposes of this rule:

(a) A producer member of the Commission must have paid the commission assessment, if any, on the commodity in each of the preceding three calendar years.

(b) A handler member of the Commission must have collected the commission assessment, if any, each of the preceding three calendar years.

(2) Members of the Commission will have the following qualifications, which will continue during the term of office of the member:

(a) One member of the Commission will be a member of the public with an active interest in the positive economic development, production and/or marketing of the commodity, but who is not associated with the production or handling of sheep,

(b) One member will be a handler;

(c) The remaining members will be producers.

Stat. Auth.: 2003 OL Ch. 604 & ORS 576  
Stats. Implemented: 2003 OL Ch. 604 & ORS 576  
Hist.: SHEEP 1-2004, f. & cert. ef. 1-8-04; SHEEP 1-2014, f. 6-30-14, cert. ef. 7-1-14

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

**Rule Caption:** Adopts the 2014 Oregon Mechanical Specialty Code

**Adm. Order No.:** BCD 6-2014

**Filed with Sec. of State:** 6-20-2014

**Certified to be Effective:** 7-1-14

**Notice Publication Date:** 8-1-2013

**Rules Amended:** 918-440-0010, 918-440-0012, 918-440-0050

**Subject:** These rules adopt the 2012 Editions of the International Mechanical Code and the International Fuel Gas Code with Oregon amendments and shall be known as the 2014 Oregon Mechanical Specialty Code (OMSC). These rules also update the amendments made to the 2010 OMSC by incorporating them into the 2014 OMSC. These rules also establish a three month phase-in period that allows builders the choice of using the 2010 OMSC or the 2014 OMSC.

**Rules Coordinator:** Holly A. Tucker—(503) 378-5331

## 918-440-0010

### Adopted Oregon Mechanical Specialty Code

(1) The Oregon Mechanical Specialty Code is adopted pursuant to OAR chapter 918, division 8.

(2) Effective July 1, 2014 the **2014 Oregon Mechanical Specialty Code** is the 2012 Editions of the International Mechanical Code and International Fuel Gas Code as published by the International Code Council and amended by the Building Codes Division.

(3) For the purposes of implementing a phase-in period for the 2014 **Oregon Mechanical Specialty Code**, the **2010 Oregon Mechanical Specialty Code** is adopted for the period beginning July 1, 2014 and ending September 30, 2014.

(4) During the phase-in period established in subsection (3), all building departments in the state are required to accept plans designed to either the **2014 Oregon Mechanical Specialty Code** or to the **2010 Oregon Mechanical Specialty Code**.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 455.020, 455.030 & 455.110

Stats. Implemented: ORS 455.110

Hist.: DC 35, f. 6-5-74, ef. 6-25-74; DC 52(Temp), f. & ef. 7-3-75 thru 10-31-73; DC 62, f. 11-20-75, ef. 1-1-76; DC 68, f. 3-3-76, ef. 4-1-76; DC 75, f. 5-21-76, ef. 8-1-76; DC 85, f. 8-19-76, ef. 10-1-76; DC 22-1978, f. 9-1-78, ef. 10-1-78; DC 8-1979, f. 4-30-79, ef. 5-1-79/8-1-79/1-80; DC 14-1979, f. 12-27-79, ef. 1-1-80; DC 6-1980, f. 6-5-80, ef. 7-1-80; DC 11-1981, f. & ef. 7-20-81; DC 13-1981, f. 10-30-81; ef. 11-1-81; DC 14-1983, f. 6-23-83, ef. 8-1-83; DC 26-1984, f. 8-31-84, ef. 9-15-84; DC 10-1986, f. 6-30-86, ef. 7-1-86; DC 5-1987(Temp), f. & ef. 3-26-87; BCA 3-1987, f. & ef. 8-4-87; BCA 7-1987, f. & ef. 9-3-87; Renumbered from 814-027-0005; BCA 34-1989, f. 12-21-89, ef. 1-1-90; BCA 32-1991(Temp), f. & cert. ef. 9-30-91; BCA 6-1992, f. 3-24-92, cert. ef. 3-27-92; BCA 27-1992, f. 12-29-92, cert. ef. 1-1-93; BCD 2-1995, f. & cert. ef. 2-9-95; BCD 2-1996, f. 2-2-96, cert. ef. 4-1-96; BCD 5-1999, f. 6-17-99, cert. ef. 10-1-99; BCD 18-2002, f. 7-26-02, cert. ef. 10-1-02; BCD 10-2004, f. 8-6-04, cert. ef. 10-1-04; BCD 1-2007, f. 2-15-07, cert. ef. 4-1-07; BCD 3-2010, f. 5-14-10, cert. ef. 7-1-10; BCD 5-2011, f. & cert. ef. 3-11-11; BCD 22-2011, f. 7-26-11, cert. ef. 10-1-11; BCD 6-2014, f. 6-20-14, cert. ef. 7-1-14

## 918-440-0012

### Amendments to the Oregon Mechanical Specialty Code

The **Oregon Mechanical Specialty Code** is amended pursuant to OAR chapter 918, division 8. Amendments adopted for inclusion into the **Oregon Mechanical Specialty Code** are placed in this rule, showing the section reference, a descriptive caption, and a short description of the amendment.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 455.030

Stats. Implemented: ORS 455.110

Hist.: BCD 32-1994, f. & cert. ef. 12-30-94; BCD 2-1996, f. 2-2-96, cert. ef. 4-1-96; BCD 5-1997, f. 3-21-97, cert. ef. 4-1-97; BCD 19-1998, f. 9-30-98, cert. ef. 10-1-98; BCD 15-1999, f. & cert. ef. 10-6-99 thru 4-2-00; BCD 5-2000, f. 3-9-00, cert. ef. 4-1-00; BCD 8-2001, f. 7-17-01, cert. ef. 10-1-01; BCD 19-2003, f. 12-15-03, cert. ef. 1-1-04; BCD 10-2004, f. 8-6-04, cert. ef. 10-1-04; BCD 9-2006, f. 6-30-06, cert. ef. 7-1-06; Renumbered from 918-440-0040 by BCD 3-2010, f. 5-14-10, cert. ef. 7-1-10; Renumbered from 918-440-0040 by BCD 5-2011, f. & cert. ef. 3-11-11; Renumbered from 918-440-0040 by BCD 22-2011, f. 7-26-11, cert. ef. 10-1-11; BCD 37-2011, f. 12-30-11, cert. ef. 1-1-12; BCD 6-2014, f. 6-20-14, cert. ef. 7-1-14

## 918-440-0050

### Mechanical Permit Fees

(1) Effective July 1, 1999, the Building Codes Division fees for administration of the Oregon Mechanical Specialty Code are found in Table 1-A. These fees are based on 130 percent of Table 3-A of the 1979 edition of the Uniform Mechanical Code as published by the International Conference of Building Officials, as authorized in ORS 455.210.

(2) Plan review fees shall be equal to 25 percent of the total permit fees as established in Table 1-A.

[ED. NOTE: Tables referenced are available from the agency.]

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 455.020 & 455.210

Stats. Implemented: ORS 455.210

Hist.: BCD 8-1999(Temp), f. & cert. ef. 7-1-99 thru 12-27-99; BCD 11-1999, f. 9-7-99, cert. ef. 10-1-99; BCD 15-1999, f. & cert. ef. 10-6-99 thru 4-2-00; BCD 5-2000, f. 3-9-00, cert. ef. 4-1-00; BCD 19-2003, f. 12-15-03, cert. ef. 1-1-04; BCD 3-2010, f. 5-14-10, cert. ef. 7-1-10; BCD 5-2011, f. & cert. ef. 3-11-11; BCD 22-2011, f. 7-26-11, cert. ef. 10-1-11; BCD 6-2014, f. 6-20-14, cert. ef. 7-1-14

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**Rule Caption:** Adopts the 2014 Oregon Structural Specialty Code

**Adm. Order No.:** BCD 7-2014

**Filed with Sec. of State:** 6-20-2014

**Certified to be Effective:** 7-1-14

**Notice Publication Date:** 8-1-2013

**Rules Amended:** 918-460-0010, 918-460-0015, 918-460-0050, 918-460-0500

**Rules Repealed:** 918-460-0510

**Subject:** These rules adopt the 2014 Oregon Structural Specialty Code (OSSC). The 2014 OSSC is based upon the 2012 edition of the International Building Code with Oregon amendments and the 2014 Oregon Energy Efficiency Specialty Code (OEESC). These rules also establish a three month phase-in period that allows builders the choice of using the 2010 OSSC, the 2010 OEESC, or the 2014 OSSC.

**Rules Coordinator:** Holly A. Tucker—(503) 378-5331

# ADMINISTRATIVE RULES

## 918-460-0010

### Adopted Oregon Structural Specialty Code

(1) The Oregon Structural Specialty Code is adopted pursuant to OAR chapter 918, division 8.

(2) Effective July 1, 2014 the **2014 Oregon Structural Specialty Code** is:

(a) The 2012 Edition of the International Building Code, as published by the International Code Council, and amended by the Building Codes Division; and

(b) The energy provisions adopted pursuant to OAR 918-460-0500.

(3)(a) For the purposes of implementing a phase-in period for the **2014 Oregon Structural Specialty Code**, the **2010 Oregon Structural Specialty Code** is adopted for the period beginning July 1, 2014 and ending September 30, 2014.

(b) During the phase-in period established in subsection (3)(a), all building departments in the state are required to accept plans for structures designed to either the **2014 Oregon Structural Specialty Code** or to the **2010 Oregon Structural Specialty Code**.

(4) Code requirements in effect at the time a plan review or permit application is filed controls the construction under the application unless the applicant agrees to be controlled by subsequent changes.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 455.020, 455.110 & 455.447

Stats. Implemented: ORS 455.110

Hist.: DC 34, f. 6-5-74, ef. 6-25-74; DC 36(Temp), f. & ef. 7-1-74; DC 37, f. 8-30-74, ef. 9-25-74; DC 45, f. 4-7-75, ef. 4-25-75; DC 51(Temp), f. & ef. 7-3-75 - 10-31-75; DC 61, f. 11-20-75, ef. 1-1-76; DC 67, f. & ef. 2-19-76; DC 68, f. 3-3-76, ef. 4-1-76; DC 76, f. 5-21-76, ef. 8-1-76; DC 77, f. 5-26-76, ef. 6-3-76; DC 84, f. 8-19-76, ef. 10-1-76; DC 102, f. & ef. 11-1-77; DC 104, f. 12-1-77, ef. 12-10-77; DC 2-1978, f. 1-20-78, ef. 3-1-78; DC 18-1978, f. 5-4-78, ef. 5-15-78; DC 5-1978(Temp), f. 2-22-78, ef. 3-1-78 thru 4-29-78; DC 29-1978, f. 10-27-78, ef. 1-1-79; DC 31-1978(Temp), f. 12-8-78, ef. 1-1-79; DC 33-1978(Temp), f. 12-27-78, ef. 1-1-79; DC 6-1979 (Temp), f. 3-13-79, ef. 4-1-79; DC 8-1979, f. 4-30-79, ef. 5-1-79; DC 11-79/1-1-80; DC 12-1979(Temp), f. 7-2-79, ef. 8-1-79; DC 13-1979, f. 11-1-79, ef. 12-1-79; DC 7-1980, f. 6-5-80, ef. 7-1-80; DC 15-1980(Temp), f. & ef. 10-13-80; DC 11-1981, f. & ef. 7-20-81; DC 13-1981, f. 10-30-81, ef. 11-1-81; DC 15-1981, f. 10-30-81, ef. 1-1-82; DC 9-1982, f. & ef. 3-1-82; DC 14-1983, f. 6-23-83, ef. 8-1-83; DC 26-1984, f. 8-31-84, ef. 9-15-84; DC 35-1984, f. & ef. 11-28-84; DC 14-1985(Temp), f. & ef. 6-21-85; DC 21-1985, f. 12-18-85, ef. 1-1-86; DC 10-1986, f. 6-30-86, ef. 7-1-86; DC 19-1986, f. 10-31-86, ef. 11-1-86; DC 5-1987(Temp), f. & ef. 3-26-87; DC 12-1987(Temp), f. 4-21-87, ef. 4-24-87; BCA 7-1987, f. & ef. 9-3-1987; BCA 11-1987, f. & ef. 10-21-87; BCA 12-1987, f. & ef. 11-5-87; Renumbered from 814-026-0005; BCA 34-1989, f. 12-21-89, cert. ef. 1-1-90; BCA 30-1990, f. 12-21-90, cert. ef. 1-1-92; BCA 43-1991(Temp), f. 12-24-91, cert. ef. 1-1-92; BCA 3-1992(Temp), f. 3-4-92, cert. ef. 3-5-92; BCA 12-1992, f. 6-29-92, cert. ef. 7-1-92; BCA 27-1992, f. 12-29-92, cert. ef. 1-1-93; BCA 3-1993(Temp), f. & cert. ef. 3-3-93; BCA 19-1993(Temp), f. 8-26-93, cert. ef. 9-1-93; BCA 26-1993, f. 10-22-93, cert. ef. 11-1-93; BCD 6-1994, f. 2-25-94, cert. ef. 5-1-94; BCD 2-1996, f. 2-2-96, cert. ef. 4-1-96; BCD 19-1998, f. 9-30-98, cert. ef. 10-1-98; BCD 16-2004, f. 9-24-04, cert. ef. 10-1-04; BCD 1-2007, f. 2-15-07, cert. ef. 4-1-07; BCD 4-2010, f. 5-14-10, cert. ef. 7-1-10; BCD 6-2011, f. & cert. ef. 3-11-11; BCD 23-2011, f. 7-26-11, cert. ef. 10-1-11; BCD 7-2014, f. 6-20-14, cert. ef. 7-1-14

## 918-460-0015

### Amendments to the Oregon Structural Specialty Code

The **Oregon Structural Specialty Code** is amended pursuant to OAR chapter 918, division 8. Amendments adopted for inclusion into the **Oregon Structural Specialty Code** are placed in this rule, showing the section reference, a descriptive caption, and a short description of the amendment.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 447.231, 447.247, 455.030, 455.110 & 455.112

Stats. Implemented: ORS 447.247, 455.110 & 455.112

Hist.: BCA 18-1993, f. 8-24-93, cert. ef. 8-29-93; BCA 28-1993, f. 10-22-93, cert. ef. 1-1-94; BCD 6-1994, f. 2-25-94, cert. ef. 5-1-94; BCD 22-1994, f. 9-28-94, cert. ef. 1-1-95; BCD 31-1994(Temp), f. & cert. ef. 12-23-94; BCD 32-1994, f. & cert. ef. 12-30-94; BCD 2-1995, f. & cert. ef. 2-9-95; BCD 5-1995, f. & cert. ef. 3-15-95; BCD 2-1996, f. 2-2-96, cert. ef. 4-1-96; BCD 6-1996, f. 3-29-96, cert. ef. 4-1-96; BCD 12-1997, f. 9-10-97, cert. ef. 10-1-97; BCD 19-1998, f. 9-30-98, cert. ef. 10-1-98; BCD 24-1998(Temp), f. & cert. ef. 12-1-98 thru 5-29-99; Temporary Rule repealed by BCD 3-1999, f. 3-12-99, cert. ef. 4-1-99; BCD 5-1999, f. 6-17-99, cert. ef. 10-1-99; BCD 12-1999(Temp), f. 9-23-99, cert. ef. 11-1-99 thru 4-28-00; BCD 2-2000 f. 1-14-00, cert. ef. 4-1-00; BCD 20-2000, f. 9-15-00, cert. ef. 10-1-00; BCD 8-2001, f. 7-17-01, cert. ef. 10-1-01; BCD 18-2001, f. 12-21-01, cert. ef. 1-1-02; BCD 14-2003, f. 8-13-03, cert. ef. 10-1-03; BCD 18-2003(Temp) f. & cert. ef. 11-14-03 thru 5-11-04; BCD 5-2004, f. & cert. ef. 4-1-04; BCD 16-2004, f. 9-24-04, cert. ef. 10-1-04; BCD 21-2004, f. & cert. ef. 10-1-04; BCD 9-2005(Temp), f. & cert. ef. 4-7-05 thru 9-30-05; BCD 14-2005, f. & cert. ef. 7-5-05; BCD 18-2005(Temp), f. & cert. ef. 7-12-05 thru 9-30-05; BCD 22-2005, f. 9-29-05, cert. ef. 10-1-05; BCD 23-2005, f. 9-29-05, cert. ef. 10-1-05; BCD 1-2006, f. & cert. ef. 2-1-06; BCD 9-2006, f. 6-30-2006, cert. ef. 7-1-06; BCD 1-2007, f. 2-15-07, cert. ef. 4-1-07; BCD 9-2008(Temp), f. & cert. ef. 6-25-08 thru 12-22-08; BCD 20-2008, f. 9-30-08, cert. ef. 10-1-08; BCD 4-2010, f. 5-14-10, cert. ef. 7-1-10; BCD 19-2010, f. 12-30-10, cert. ef. 1-1-11; BCD 1-2011, f. & cert. ef. 2-15-11; BCD 14-2011(Temp), f. & cert. ef. 5-13-11 thru 11-9-11; BCD 28-2011, f. 9-30-11, cert. ef. 10-1-11; BCD 30-2011, f. & cert. ef. 11-1-11; BCD 32-2011, f. 12-30-11, cert. ef. 1-1-12; BCD 1-2012, f. 1-31-12, cert. ef. 2-1-12; BCD 8-2012, f. 8-31-12, cert. ef. 9-1-12; BCD 7-2014, f. 6-20-14, cert. ef. 7-1-14

## 918-460-0050

### Structural Permit Fees

Effective July 1, 1999, the Building Codes Division fees for administration of the **Oregon Structural Specialty Code** are found in Table 1-A.

These fees are based on 130 percent of Table 3-A of the 1979 edition of the Uniform Building Code as published by the International Conference of Building Officials, as authorized in ORS 455.210.

[ED. NOTE: Tables referenced are available from the agency.]

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 455.020 & 455.210

Stats. Implemented: ORS 455.210

Hist.: BCD 8-1999(Temp), f. & cert. ef. 7-1-99 thru 12-27-99; BCD 11-1999, f. 9-7-99, cert. ef. 10-1-99; BCD 4-2010, f. 5-14-10, cert. ef. 7-1-10; BCD 6-2011, f. & cert. ef. 3-11-11; BCD 23-2011, f. 7-26-11, cert. ef. 10-1-11; BCD 7-2014, f. 6-20-14, cert. ef. 7-1-14

## 918-460-0500

### Energy Provisions of the Oregon Structural Specialty Code

(1) The energy provisions of the **Oregon Structural Specialty Code** are adopted pursuant to OAR chapter 918, division 8.

(2) Effective July 1, 2014, the energy provisions in Chapter 13 of the **Oregon Structural Specialty Code** are adopted in the publication titled **2014 Oregon Energy Efficiency Specialty Code**.

(3) The publication titled **2014 Oregon Energy Efficiency Specialty Code** is based upon the 2010 edition of the **Oregon Energy Efficiency Specialty Code**, with additional Oregon amendments.

(4) For the purposes of implementing a phase-in period for the energy provisions of the **Oregon Structural Specialty Code**, the **2010 Oregon Energy Efficiency Specialty Code** is adopted for the period beginning July 1, 2014 and ending September 30, 2014.

(5) During the phase-in period established in subsection (4), all building departments in the state are required to accept plans for structures designed to either the energy provisions in Chapter 13 of the **Oregon Structural Specialty Code** or to the **2010 Oregon Energy Efficiency Specialty Code**.

(6) Code requirements in effect at the time a plan review or permit application is filed controls the construction under the application unless the applicant agrees to be controlled by subsequent changes.

(7) All references and code provisions adopted in this rule, in OAR chapter 918, or in any specialty code adopted thereunder to the **Oregon Energy Efficiency Specialty Code** mean the energy provisions of the **Oregon Structural Specialty Code** found in Chapter 13 of the **Oregon Structural Specialty Code**.

[Publication: Publications referenced are available from the agency.]

Stat. Auth.: ORS 455.020, 455.030, 455.110, 455.505 & 455.511

Stats. Implemented: ORS 455.110 & 455.511

Hist.: BCD 5-2010, f. 5-14-10, cert. ef. 7-1-10; BCD 4-2011, f. & cert. ef. 3-11-11; BCD 21-2011, f. 7-26-11, cert. ef. 10-1-11; BCD 7-2014, f. 6-20-14, cert. ef. 7-1-14

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## Department of Consumer and Business Services, Insurance Division Chapter 836

**Rule Caption:** Actions by Director for Restitution or Other Equitable Relief

**Adm. Order No.:** ID 10-2014

**Filed with Sec. of State:** 6-20-2014

**Certified to be Effective:** 6-20-14

**Notice Publication Date:** 5-1-2014

**Rules Adopted:** 836-007-0001

**Subject:** This rule clarifies when and how the director may exercise the discretionary authority to seek restitution or other equitable relief on behalf of a consumer who has suffered damages as a result of an insurer's violation of the Insurance Code, applicable federal law or the insurer's breach of an insurance contract or policy that the insurer has with the consumer. The rule defines "consumer," "actual damages" and "equitable relief" and specifies when the director will seek relief. The rule specifically states that the director will not seek relief on behalf of a consumer who is entitled to an exclusive remedy under the workers compensation laws of this state and specifies that the director may reduce actual damages upon a showing that the consumer has failed to reasonably mitigate damages.

This permanent rule will apply on and after the date the rules are adopted. The department adopted temporary rules effective December 27, 2013 and this permanent rule replaces the temporary rules.

**Rules Coordinator:** Victor Garcia—(503) 947-7260

## 836-007-0001

### Actions by Director for Restitution or Other Equitable Relief

(1) As used in this rule:

(a) "Actual damages" means reasonably foreseeable losses.

# ADMINISTRATIVE RULES

(b) “Consumer” means an insured under a policy that is the subject of the enforcement action.

(c) “Equitable relief” means injunctive relief, specific performance of a contract provision or specific performance of a provision of the Insurance Code or rules implementing the Insurance Code or applicable federal law.

(2) The Director of the Department of Consumer and Business Services:

(a) May seek restitution of actual damages or other equitable relief on a consumer’s behalf only when the director takes an action against an insurer under ORS 731.256(1).

(b) Will not seek relief under subsection (a) of this section for any consumer who is entitled to a remedy under ORS Chapter 656; and

(c) May reduce actual damages upon a showing that the consumer has failed to reasonably mitigate damages.

Stat. Auth.: ORS 731.244

Stats. Implemented: ORS 731.256

Hist.: ID 8-2013(Temp), f. & cert. ef. 12-31-13 thru 6-20-14; ID 10-2014, f. & cert. ef. 6-20-14

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**Department of Consumer and Business Services,  
Workers’ Compensation Board  
Chapter 438**

**Rule Caption:** Provide for filing/service of any other thing Board makes available for filing by website portal.

**Adm. Order No.:** WCB 1-2014

**Filed with Sec. of State:** 6-20-2014

**Certified to be Effective:** 9-1-14

**Notice Publication Date:** 5-1-2014

**Rules Amended:** 438-005-0046

**Subject:** As part of its comprehensive review of OAR chapter 438 rules, the Board invited public comment, which ultimately resulted in the appointment of an Advisory Committee on Technology. Among other recommendations, the Technology Committee suggested that the Board consider expanding the types of materials that could be electronically filed in the future. After considering this suggestion, the Board proposed to amend 438-005-0046(1) and (2) to provide for website portal filing/service of “any other thing” that it makes available for filing by website portal. The Board proposed such an approach to permit website portal filing/service of additional things as the website portal system is expanded in the future, without the need to amend 438-005-0046(1), (2) to explicitly list each new thing added to the website portal.

**Rules Coordinator:** Karen Burton—(503) 934-0123

## 438-005-0046

### Filing and Service of Documents; Correspondence

(1) Filing:

(a) Except as otherwise provided in these rules, “filing” means the physical delivery of a thing to any permanently staffed office of the Board, or the date of mailing;

(b) In addition to the procedures otherwise described in these rules, “filing” may also be accomplished in the manner prescribed in OAR 436, division 9 or 10 for filing a request for administrative review with the Director provided that the request involves a dispute that requires a determination of either the compensability of the medical condition for which medical services are proposed or whether a sufficient causal relationship exists between medical services and an accepted claim to establish compensability;

(c) If filing of a request for hearing or Board review of either an Administrative Law Judge’s order or a Director’s order finding no bona fide medical services dispute is accomplished by mailing, it shall be presumed that the request was mailed on the date shown on a receipt for registered or certified mail bearing the stamp of the United States Postal Service showing the date of mailing. If the request is not mailed by registered or certified mail and the request is actually received by the Board after the date for filing, it shall be presumed that the mailing was untimely unless the filing party establishes that the mailing was timely;

(d) If a settlement stipulation, disputed claim settlement, or claim disposition agreement results from a mediation, “filing” also includes the physical delivery of the settlement stipulation, disputed claim settlement, or claim disposition agreement to the Administrative Law Judge who mediated the settlement or agreement, regardless of location.

(e) The following things may be filed by electronic mail (e-mail) pursuant to subsection (f) of this section:

(A) Request for hearing;

(B) Request for Board review of an Administrative Law Judge’s order;

(C) Request for Board review of a Director’s order finding no bona fide medical services dispute;

(D) Request for extension of the briefing schedule under OAR 438-011-0020;

(E) Request for waiver of the Board’s rules under OAR 438-011-0030; or

(F) Response to issues under OAR 438-006-0036.

(f) To electronically file the requests listed in subsection (e) of this section by e-mail, a party shall:

(A) Send an e-mail to: request.wcb@state.or.us; and

(B) Attach an electronic copy of a completed Workers’ Compensation Board “Request for Hearing Form,” or a completed request for Board review, or a completed request for extension of the briefing schedule, or a completed request for waiver of the Board’s rules, or a completed Board “Response to Issues Form.” These attachments must be in a format of Microsoft Word 2000® (.doc, .txt, .rtf), Adobe Reader® (.pdf), or formats that can be viewed in Internet Explorer® (.tif, .jpg).

(C) For purposes of this rule, the date of an electronic filing is determined by the date the Board receives the appropriate completed electronic form which must be in a format of Microsoft Word 2000® (.doc, .txt, .rtf), Adobe Reader® (.pdf), or formats that can be viewed in Internet Explorer® (.tif, .jpg). An electronic filing under subsections (e) and (f) of this section received by the Board by 11:59 p.m. of a non-holiday, weekday is filed on that date.

(g) The following things may be filed by website portal pursuant to subsection (h) of this section:

(A) All actions described in subsection (e) of this section; and

(B) Filing of any other thing that the Board makes available for filing by website portal.

(h) To electronically file the things listed in subsection (g) of this section by website portal, a party shall:

(A) Register as a “user” of the portal at: <https://portal.wcb.oregon.gov>; and

(B) For subparagraph (g)(A) of this section, as appropriate, complete the electronic version of the Workers’ Compensation Board “Request for Hearing Form,” or complete a request for Board review, or complete a request for extension of a briefing schedule, or complete a request for waiver of the Board’s rules, or complete a Board “Response to Issues Form”; or

(C) For subparagraph (g)(B) of this section, complete the appropriate items on the website portal.

(D) For the purposes of this rule, the date of a portal filing is determined by the date the Board receives the appropriate portal version of the form.

(E) A portal filing under subsections (g) and (h) of this section received by the Board by 11:59 p.m. of a non-holiday, weekday is filed as of that date.

(i) “Filing” includes the submission of any document (other than the exchange of exhibits and indexes under OAR 438-007-0018) to any permanently staffed office of the Board by means of a telephone facsimile communication device (FAX) provided that:

(A) The document transmitted indicates at the top that it has been delivered by FAX;

(B) The Board’s facsimile transmission number is used; and

(C) The Board receives the complete FAX-transmitted document by 11:59 p.m. of a non-holiday, weekday.

(j) Except for the documents specified in subsections (c), (e), or (g) of this section, filing of any other thing required to be filed within a prescribed time may be accomplished by mailing by first class mail, postage prepaid. An attorney’s certificate that a thing was deposited in the mail on a stated date is proof of mailing on that date. If the thing is not received within the prescribed time and no certificate of mailing is furnished, it shall be presumed that the filing was untimely unless the filing party establishes that the filing was timely.

(2) Service:

(a) A true copy of any thing delivered for filing under these rules shall be simultaneously served personally, by means of a facsimile transmission, by means of e-mail or website portal regarding requests, responses, or any other thing filed under OAR 438-005-0046(1)(e), (f), (g), or (h), or by mailing by first-class mail, postage prepaid, through the United States Postal Service, to each other party, or to their attorneys. Service by mail is com-

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plete upon mailing, service by facsimile transmission is complete upon disconnection following an error-free transmission, and service by e-mail or website portal regarding requests, responses, or any other thing filed under 438-005-0046(1)(e), (f), (g), or (h), is complete upon successful transmission, provided that the copy is sent in a format readable by the recipient;

(b) Any thing delivered for filing under these rules shall include or have attached thereto either an acknowledgment of service by the person served or proof of service in the form of a certificate executed by the person who made service showing personal delivery, service by means of a facsimile transmission, service by means of e-mail or website portal regarding requests, responses, or any other thing filed under OAR 438-005-0046(1)(e), (f), (g), or (h), or deposit in the mails together with the names and addresses of the persons served.

(3) Correspondence. All correspondence to the Board shall be captioned with the name of the claimant, the WCB Case number and the insurer or self-insured employer claim number. Correspondence to the Hearings Division shall also be captioned with the date of the hearing and name of the assigned Administrative Law Judge, if any.

(4) Signatures.

(a) Any thing delivered for filing under these rules shall include the signature of the party or the party's attorney, which may be provided in writing, by facsimile transmission, by electronic scanning, by the website portal, or by other electronic means.

(b) The user name and password required to file a document with the Board by means of the website portal shall constitute the signature of the filer and for any other purpose for which a signature is required.

(c) Except for documents filed under subsection (b) of this section, any document filed by electronic means must include a signature block that includes the printed name of the filer, preceded by an electronic symbol intended to substitute for a signature (such as a scan of the filer's handwritten signature or "s/") in the space where the signature would otherwise appear.

(d) Any order, notice, or any other document issued by an Administrative Law Judge or a Board Member may include his/her signature in writing, by facsimile transmission, by electronic scanning, by the website portal, or by other electronic means permitted under the Board's rules.

(e) Any electronically transmitted signature shall have the same force and effect as an original signature, provided that the electronically transmitted signature is executed or adopted by a person with the intent to sign the document as prescribed in ORS Chapter 84 (Uniform Electronic Transactions Act).

Stat. Auth.: ORS 656.726(5)

Stats. Implemented: ORS 656.726(5)

Hist.: WCB 5-1987, f. 12-18-87, cert. ef. 1-1-88; 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 3-1991(Temp), f. 5-24-91, cert. ef. 5-28-91; WCB 8-1991, f. 11-6-91, cert. ef. 11-7-91; WCB 1-1999, f. 8-24-99, cert. ef. 11-1-99; WCB 2-1999(Temp), f. 9-24-99, cert. ef. 10-23-99 thru 4-14-00; WCB 1-2000, f. 3-29-00, cert. ef. 4-3-00; WCB 1-2007, f. 1-19-07, cert. ef. 3-1-07; WCB 2-2007, f. 12-11-07, cert. ef. 1-1-08; WCB 1-2012, f. 8-22-12, cert. ef. 11-1-12; WCB 2-2013, f. 12-10-13, cert. ef. 4-1-14; WCB 1-2014, f. 6-20-14, cert. ef. 9-1-14

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

**Rule Caption:** Suspension of temporary rules governing electronic data interchange for reporting medical bill data

**Adm. Order No.:** WCD 7-2014(Temp)

**Filed with Sec. of State:** 7-10-2014

**Certified to be Effective:** 10-1-14 thru 12-27-14

**Notice Publication Date:**

**Rules Suspended:** 436-160-0005(T), 436-160-0011(T), 436-160-0012(T), 436-160-0013(T), 436-160-0014(T), 436-160-0015(T), 436-160-0016(T), 436-160-0017(T), 436-160-0018(T), 436-160-0019(T), 436-160-0040(T), 436-160-0060(T), 436-160-0405(T), 436-160-0430(T), 436-160-0440(T), 436-160-0445(T)

**Subject:** This rulemaking action suspends temporary rules to allow adoption of revised, permanent rules on electronic data interchange of medical bill data, effective Oct. 1, 2014.

**Rules Coordinator:** Fred Bruyns—(503) 947-7717

### 436-160-0005

#### General Definitions

For the purpose of these rules, unless it conflicts with statute or rule:

(1) "ANSI" means the American National Standards Institute.

(2) "Conditional data element" means an element that becomes mandatory under certain conditions. Once mandatory, a conditional data element will cause a rejection of the transaction if the data element is omitted or submitted in a format not capable of being processed by the division's information processing system.

(3) "Director" means the Director of the Department of Consumer and Business Services or the director's designee for the matter.

(4) "Division" means the Workers' Compensation Division of the Department of Consumer and Business Services.

(5) "Electronic Data Interchange" or "EDI" means a computer to computer exchange of information in a standardized electronic format.

(6) "Electronic Record" means information created, generated, sent, communicated, received, or stored by electronic means.

(7) "FEIN" means the federal employer identification number or other federal reporting number used by the insurer, insured, or employer for federal tax reporting purposes.

(8) "Header record" means the record that precedes each transmission for the purpose of identifying a sender, the date and time of the transmission, and the transaction set within the transmission.

(9) "IAIABC" means the International Association of Industrial Accident Boards and Commissions, a professional trade association comprised of state workers' compensation regulators and insurance representatives ([www.iaiaabc.org](http://www.iaiaabc.org)).

(10) "Information" means data, text, images, sounds, codes, computer programs, software, databases, or the like.

(11) "Insurer" means the State Accident Insurance Fund Corporation, an insurer authorized under ORS Chapter 731 to transact workers' compensation insurance in Oregon, or a self-insured employer.

(12) "Mandatory data element" means an element that will cause a rejection of a transaction if the data element is omitted or submitted in a format not capable of being processed by the division's information processing system.

(13) "Optional data element" means an element that an insurer should report to the director if the information is available to the insurer. Optional data elements will not cause a rejection if missing or invalid.

(14) "Record" means electronic record.

(15) "Reprocessed transaction" means a rejected transaction that, at the discretion of the director, has been reprocessed and accepted by the division.

(16) "Sender" means the person or entity reporting electronic data interchange transactions to the division. Sender may include vendors or insurers.

(17) "Trading partner agreement" means the agreement entered into under OAR 436-160-0020 between the director and an insurer to conduct transactions via EDI.

(18) "Trailer record" means the record that designates the end of a transmission and provides a count of transactions contained within the transmission, not including the header and trailer records.

(19) "Transaction" means a set of EDI records, defined according to standards in OAR 436-160-0004.

(20) "Transmission" means a defined set of transactions, including both header and trailer records to be sent to the division or sender via EDI.

(21) "Vendor" means an agent identified by the insurer to submit transmissions to the division on behalf of an insurer. Vendors may include service companies, third party administrators, and managing general agents.

Stat. Auth.: ORS 656.264, 656.726(4)

Stats. Implemented: ORS 84.004 & 656.264

Hist.: WCD 3-2003, f. 3-18-03, cert. ef. 4-1-03; WCD 10-2007, f. 11-1-07, cert. ef. 1-1-08; WCD 4-2008, f. 9-17-08, cert. ef. 7-1-09; WCD 7-2010, f. 10-1-10, cert. ef. 1-1-11; WCD 6-2013, f. 10-10-13, cert. ef. 7-1-14; WCD 5-2014(Temp), f. 6-5-14, cert. ef. 7-1-14 thru 12-27-14; Temporary suspended by WCD 7-2014(Temp), f. 7-10-14, cert. ef. 10-1-14 thru 12-27-14

### 436-160-0011

#### Purpose (formerly 436-160-0002)

The director's purpose is to require workers' compensation medical data reporting via electronic data interchange.

Stat. Authority: ORS 656.264 & 656.726(4)

Stat. Implemented: ORS 656.264

Hist.: WCD 5-2014(Temp), f. 6-5-14, cert. ef. 7-1-14 thru 12-27-14; Temporary suspended by WCD 7-2014(Temp), f. 7-10-14, cert. ef. 10-1-14 thru 12-27-14

### 436-160-0012

#### Applicability of Rules (formerly 436-160-0003)

(1) These rules apply to workers' compensation related transactions filed with the director via electronic data interchange on or after the effective date of these rules.

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(2) The director may, unless otherwise obligated by statute, waive any procedural rules in this rule division as justice so requires.

Stat. Authority: ORS 656.726(4)  
Stat. Implemented: ORS 656.726(4)  
Hist.: WCD 5-2014(Temp), f. 6-5-14, cert. ef. 7-1-14 thru 12-27-14; Temporary suspended by WCD 7-2014(Temp), f. 7-10-14, cert. ef. 10-1-14 thru 12-27-14

## 436-160-0013

### Administration of Rules (formerly 436-160-0006)

Orders issued by the division in carrying out the director's authority to enforce ORS Chapter 656 are considered orders of the director.

Stat. Authority: ORS 656.704 & 656.726(4);  
Stat. Implemented: ORS 656.704 & 656.726(4)  
Hist.: WCD 5-2014(Temp), f. 6-5-14, cert. ef. 7-1-14 thru 12-27-14; Temporary suspended by WCD 7-2014(Temp), f. 7-10-14, cert. ef. 10-1-14 thru 12-27-14

## 436-160-0014

### Security (formerly 436-160-0010)

(1) The sender will verify that an electronic signature, record, or performance is that of a specific person.

(2) The sender will utilize anti-virus software to eliminate any viruses on all electronic transmissions. The sender will maintain the anti-virus software with the most recent anti-virus update files from the software provider. The sender will notify the director immediately if a virus is detected.

Stat. Authority: ORS 656.264 & 656.726(4)  
Stat. Implemented: ORS 656.264  
Hist.: WCD 5-2014(Temp), f. 6-5-14, cert. ef. 7-1-14 thru 12-27-14; Temporary suspended by WCD 7-2014(Temp), f. 7-10-14, cert. ef. 10-1-14 thru 12-27-14

## 436-160-0015

### Trading Partner Agreement (formerly 436-160-0020)

(1) If the director so requires, an insurer must enter into a trading partner agreement with the director before the division will begin testing with or accept production electronic transmissions from the insurer or from a vendor on behalf of that insurer.

(2) The trading partner agreement will include:

- (a) A statement that the insurer will remain responsible and liable for all electronic records transmitted to the director;
- (b) Transmission protocol between sender and director;
- (c) A specific description of the form, format, and delivery of electronic transmissions under OAR 436-160-0004 and 436-160-0050;
- (d) Specific identifying information for insurer, third party administrator, if any, and vendor, if any;
- (e) Cost allocation of transactions, if any;
- (f) The time frame for the director to submit acknowledgements of transmissions; and
- (g) Any other necessary statements, conditions, or requirements to facilitate EDI.

Stat. Authority: ORS 656.264 & 656.726(4)  
Stat. Implemented: ORS 84.013 & 656.264  
Hist.: WCD 5-2014(Temp), f. 6-5-14, cert. ef. 7-1-14 thru 12-27-14; Temporary suspended by WCD 7-2014(Temp), f. 7-10-14, cert. ef. 10-1-14 thru 12-27-14

## 436-160-0016

### Retention of Electronic Records (formerly 436-160-0030)

Insurers and self-insured employers must retain workers' compensation records under OAR 436-050-0120, 436-050-0220, and 436-009-0030. Records may be retained in electronic format if the records can be reproduced.

Stat. Authority: ORS 656.726(4)  
Stat. Implemented: ORS 656.455 & 731.475  
Hist.: WCD 5-2014(Temp), f. 6-5-14, cert. ef. 7-1-14 thru 12-27-14; Temporary suspended by WCD 7-2014(Temp), f. 7-10-14, cert. ef. 10-1-14 thru 12-27-14

## 436-160-0017

### Form, Format, and Delivery for Electronic Data Reporting (formerly 436-160-0050)

The form, format, and delivery of data elements and definitions will conform to the standards specified in OAR 436-160-0004, or as otherwise identified in the trading partner agreement.

Stat. Authority: ORS 656.726(4)  
Stat. Implemented: ORS 84.013 & 656.264  
Hist.: WCD 5-2014(Temp), f. 6-5-14, cert. ef. 7-1-14 thru 12-27-14; Temporary suspended by WCD 7-2014(Temp), f. 7-10-14, cert. ef. 10-1-14 thru 12-27-14

## 436-160-0018

### Electronic signature (formerly 436-160-0070)

The sender's federal employer identification number (FEIN) plus its postal code as reported in the header record and stated in the trading part-

ner agreement, if such an agreement is required, is the unique identifier that is the electronic signature for electronic data interchange.

Stat. Authority: ORS 656.726(4)  
Stat. Implemented: ORS 84.001-84.061 & 656.264  
Hist.: WCD 5-2014(Temp), f. 6-5-14, cert. ef. 7-1-14 thru 12-27-14; Temporary suspended by WCD 7-2014(Temp), f. 7-10-14, cert. ef. 10-1-14 thru 12-27-14

## 436-160-0019

### Address Reporting (formerly 436-160-0090)

The sender will follow the standard United States Postal Service guidelines in reporting all addresses.

Stat. Authority: ORS 656.726(4)  
Stat. Implemented: ORS 656.264  
Hist.: WCD 5-2014(Temp), f. 6-5-14, cert. ef. 7-1-14 thru 12-27-14; Temporary suspended by WCD 7-2014(Temp), f. 7-10-14, cert. ef. 10-1-14 thru 12-27-14

## 436-160-0040

### Recognized Filing Date

(1) Unless otherwise stated in the trading partner agreement, an electronic record is sent when it:

(a) Is addressed or directed properly to an information processing system designated or used by the division to receive electronic records or information;

(b) Is in a form and format capable of being processed by that system; and

(c) Enters an information processing system outside the control of the sender or enters a region of the information processing system designated or used by the division and that is under control of the division.

(2) Unless otherwise stated in the trading partner agreement an electronic record is received when it:

(a) Enters an information processing system designated or used by the division to receive electronic records or information of the type sent and from which the division is able to retrieve the electronic record; and

(b) Is in a form and format capable of being processed by the division's information processing system.

(3) For the purpose of these rules, an electronic transaction is capable of being processed by the division's information processing system when all the required data elements are in the form and format specified in these rules, in the proper sequence, and in accordance with the terms of the trading partner agreement.

(4) A reprocessed transaction retains the filing date of the original transaction.

Stat. Auth.: ORS 656.264 & 656.726(4)  
Stats. Implemented: ORS 84.043 & 656.264  
Hist.: WCD 3-2003, f. 3-18-03, cert. ef. 4-1-03; WCD 4-2008, f. 9-17-08, cert. ef. 7-1-09; WCD 6-2013, f. 10-10-13, cert. ef. 7-1-14; WCD 5-2014(Temp), f. 6-5-14, cert. ef. 7-1-14 thru 12-27-14; Temporary suspended by WCD 7-2014(Temp), f. 7-10-14, cert. ef. 10-1-14 thru 12-27-14

## 436-160-0060

### Testing Procedures and Requirements

Testing and transition to production:

(1) To initiate a test for EDI, the sender must contact the director.

(2) Each transmission for test purposes must conform to the standards specified in OAR 436-160-0004, or as otherwise identified in the trading partner agreement. Test files will be evaluated in terms of whether the data was sent in the correct, standardized format.

(3) To be approved to send production transmissions, the sender must:

(a) Transmit records via EDI; and

(b) Accomplish secure file transfer protocol (SFTP) uploads and downloads.

(4) The sender must demonstrate the ability to send transmissions to the director that are readable, in the correct format, and can be processed through the division's information processing system. An EDI FTP test is successful if the sender is able to resolve any consistently recurring fatal technical errors identified by the division so that:

(a) Transmissions are sent to the director without structural errors;

(b) Transmissions are sent to the director without transaction level technical errors; and

(c) The sender can receive and process the automated EDI acknowledgement transactions.

(5) To move from test to production, 80 percent of the sender's transactions must have been accepted by the division by the end of the testing period, including corrected and resubmitted transactions. The director will consider the sender's anticipated volume of production transactions to determine the number of transactions per test transmission required.

(6) Test periods will last a maximum of 120 days. Test periods begin the day the division processes the sender's first test file. If the sender has not met the minimum requirements to move from test to production within

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120 days of the start of testing, the sender may request a testing extension period of 60 days.

(7) Senders that fail to successfully transition from test into production within 180 days must wait an additional 180 days before requesting a new test period of 120 days.

Stat. Auth.: ORS 656.726(4)  
Stats. Implemented: ORS 84.013 & 656.264  
Hist.: WCD 3-2003, f. 3-18-03, cert. ef. 4-1-03; WCD 10-2007, f. 11-1-07, cert. ef. 1-1-08; WCD 4-2008, f. 9-17-08, cert. ef. 7-1-09; WCD 7-2010, f. 10-1-10, cert. ef. 1-1-11; WCD 6-2013, f. 10-10-13, cert. ef. 7-1-14; WCD 5-2014(Temp), f. 6-5-14, cert. ef. 7-1-14 thru 12-27-14; Temporary suspended by WCD 7-2014(Temp), f. 7-10-14, cert. ef. 10-1-14 thru 12-27-14

## 436-160-0405

### Insurers' Reporting Responsibilities

(1) Insurers with an average of at least 100 accepted disabling claims per year are required to electronically submit detailed medical bill payment data to the Department of Consumer and Business Services under OAR 436-160-0415. The number of accepted disabling claims is determined by the director based on an average accepted disabling claim volume for the previous three calendar years.

(2) Once the director has determined that an insurer's average accepted disabling claim count is 100 or higher the insurer must report medical bill payment data in subsequent years. If the insurer's claim count drops below an average of 50 accepted disabling claims, the insurer may apply to the director for exemption from the reporting requirement.

(3) The director will publish the list of insurers required to report medical bill data in Bulletin 359.

(4) Insurers that were required to report medical bill payment data under OAR 436-009-0030(12) before Jan. 1, 2011, must successfully complete EDI testing and begin reporting production data before Jan. 1, 2011.

Stat. Auth.: ORS 656.726(4)  
Stats. Implemented: ORS 656.264  
Hist.: WCD 7-2010, f. 10-1-10, cert. ef. 1-1-11; WCD 6-2013, f. 10-10-13, cert. ef. 7-1-14; WCD 5-2014(Temp), f. 6-5-14, cert. ef. 7-1-14 thru 12-27-14; Temporary suspended by WCD 7-2014(Temp), f. 7-10-14, cert. ef. 10-1-14 thru 12-27-14

## 436-160-0430

### Medical Bill Data Changes or Corrections

(1) Changes or corrections to medical bill information must be submitted according to the standards referenced in OAR 436-160-0004.

(2) The Unique Bill ID will be used to match cancellations and replacements to the original bill. Failure to match on this data element will result in a rejected transaction.

Stat. Auth.: ORS 656.726(4)  
Stats. Implemented: ORS 656.264  
Hist.: WCD 10-2007, f. 11-1-07, cert. ef. 1-1-08; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08; WCD 6-2013, f. 10-10-13, cert. ef. 7-1-14; WCD 5-2014(Temp), f. 6-5-14, cert. ef. 7-1-14 thru 12-27-14; Temporary suspended by WCD 7-2014(Temp), f. 7-10-14, cert. ef. 10-1-14 thru 12-27-14

## 436-160-0440

### Monitoring and Auditing Insurers

(1) The department may monitor and conduct periodic audits of medical bill data to ensure compliance with ORS Chapter 656 and these rules.

(2) All records maintained or required to be maintained must be disclosed upon request by the director.

Stat. Auth.: ORS 656.726(4)  
Stats. Implemented: ORS 656.252, 656.254, 656.264, 656.455, 656.726  
Hist.: WCD 7-2010, f. 10-1-10, cert. ef. 1-1-11; WCD 6-2013, f. 10-10-13, cert. ef. 7-1-14; WCD 5-2014(Temp), f. 6-5-14, cert. ef. 7-1-14 thru 12-27-14; Temporary suspended by WCD 7-2014(Temp), f. 7-10-14, cert. ef. 10-1-14 thru 12-27-14

## 436-160-0445

### Assessment of Civil Penalties

(1) Under ORS 656.745, the director may assess a civil penalty against an insurer who fails to comply with ORS Chapter 656 or the director's rules and orders.

(2) The insurer is responsible for its own actions as well as the actions of others acting on the insurer's behalf. If an insurer or someone acting on the insurer's behalf violates any provisions of these rules, the director may impose a civil penalty against the insurer.

Stat. Auth.: ORS 656.726(4)  
Stats. Implemented: ORS 656.254, 656.745  
Hist.: WCD 7-2010, f. 10-1-10, cert. ef. 1-1-11; WCD 6-2013, f. 10-10-13, cert. ef. 7-1-14; WCD 5-2014(Temp), f. 6-5-14, cert. ef. 7-1-14 thru 12-27-14; Temporary suspended by WCD 7-2014(Temp), f. 7-10-14, cert. ef. 10-1-14 thru 12-27-14

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**Rule Caption:** Amendment of rules governing electronic data interchange for reporting medical bill data

**Adm. Order No.:** WCD 8-2014

**Filed with Sec. of State:** 7-10-2014

**Certified to be Effective:** 10-1-14

**Notice Publication Date:** 5-1-2014

**Rules Amended:** 436-160-0001, 436-160-0004, 436-160-0410, 436-160-0415, 436-160-0420

**Rules Repealed:** 436-160-0001(T), 436-160-0004(T), 436-160-0410(T), 436-160-0415(T), 436-160-0420(T)

**Subject:** Revised OAR 436-160, Electronic Data Interchange (EDI); Medical Bill Data:

- Adopts, by reference, the updated IAIABC EDI Implementation Guide for Medical Bill Payment Records, Release 2.0, dated Feb 1, 2014 (to supersede the Guide, also Release 2.0, dated Feb. 1, 2013);

- Includes technical corrections to Appendix "A," and related changes to Appendix "B," including:

- Deletion of DN0586, RENDERING LINE PROVIDER FEIN;  
- Amendment of DN0522 (HI02-2 through HI12-2 in the HI Segment — Institutional Bill Other Diagnosis — Situational Segment) from Applicable/Available (AR) to MC; addition of DN0522 to Appendix B;

- Amendment of DN0539 (N302 in the Loop ID 2310A — Billing Provider Information — Required Loop) from Not Applicable (NA) to If Applicable /Available (AA);

- Amendment of DN0544 (CAS05 through CAS08 in the Loop ID 2320 — Bill Level Adjustments and Amounts — Situational Loop) from AR to MC;

- Amendment of DN0557 (SV107-2 through SV107-4 in Loop ID 2400 — Service Line Information - Situational Loop) from AR to MC; amendment of two duplicate listings of DN0557 in Appendix B from SV107-1 to SV107-2 and -3, and addition of SV107-4;

- Amendment of DN0592 (NM109 in Loop ID 2420 — Rendering Line Provider Information — Situational Loop) from AR to MC;

- Amendment of DN0647 (NM109 in Loop ID 2310B — Rendering Bill Provider Information - Situational Loop) from AR to MC;

- Amendment of DN0685 (N302 in Loop ID 2310D — Service Facility Location Information — Situational Loop) from NA to AA; and

- Includes correction or clarification of identifiers, business conditions, and technical conditions in Appendix B, affecting DN0209, DN0513, DN0514, DN0515, DN0592, DN0595, DN0599, DN0625, DN0643, DN0651, DN0695, DN0742, DN0714, and DN0715.

**Rules Coordinator:** Fred Bruyns—(503) 947-7717

## 436-160-0001

### Authority, Applicability, Purpose, and Administration of these Rules

(1) These rules are promulgated under the director's authority contained in ORS 656.726(4).

(2) These rules apply to workers' compensation related transactions filed with the director by electronic data interchange (EDI) on or after Oct. 1, 2014.

(3) The purpose of these rules is to require workers' compensation medical bill data reporting by electronic data interchange.

(4) Orders issued by the division in carrying out the director's authority to enforce ORS chapter 656 are considered orders of the director.

(5) The director may waive procedural rules as justice requires, unless otherwise obligated by statute.

Stat. Auth.: ORS 656.264 & 656.726(4)  
Stats. Implemented: ORS Ch. 84 & 656.264  
Hist.: WCD 3-2003, f. 3-18-03, cert. ef. 4-1-03; WCD 7-2010, f. 10-1-10, cert. ef. 1-1-11; WCD 6-2013, f. 10-10-13, cert. ef. 7-1-14; WCD 5-2014(Temp), f. 6-5-14, cert. ef. 7-1-14 thru 12-27-14; WCD 8-2014, f. 7-10-14, cert. ef. 10-1-14

## 436-160-0004

### Adoption of Standards

(1)(a) The director adopts, by reference, IAIABC EDI Implementation Guide for Medical Bill Payment Records, Release 2.0, dated Feb 1, 2014.

(b) The director adopts, by reference, the ASC X12 Implementation Acknowledgment for Health Care Insurance (999), dated February 2011.

(2) The form, format, and delivery of data elements reported and definitions will conform to the standards adopted under section (1), unless otherwise provided in these rules.

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(3) Copies of the guides in section (1) are available for review during regular business hours at the Workers' Compensation Division, Operations Section, 350 Winter Street NE, Salem OR 97301, 503-947-7717.

(a) IAIABC members may view a copy of the Release 2.0 guide, or non-members may purchase a copy at the IAIABC website: <http://www.iaibc.org>.

(b) The ASC X12 999 guide is available for purchase at the X12 online store: <http://store.x12.org/store/healthcare-5010-consolidated-guides>.

Stat. Auth.: ORS 656.264

Stats. Implemented: ORS 656.264

Hist.: WCD 3-2003, f. 3-18-03, cert. ef. 4-1-03; WCD 10-2007, f. 11-1-07, cert. ef. 1-1-08; WCD 4-2008, f. 9-17-08, cert. ef. 7-1-09; WCD 2-2009, f. 10-5-09, cert. ef. 1-1-10; WCD 7-2010, f. 10-1-10, cert. ef. 1-1-11; WCD 6-2013, f. 10-10-13, cert. ef. 7-1-14; WCD 5-2014(Temp), f. 6-5-14, cert. ef. 7-1-14 thru 12-27-14; WCD 8-2014, f. 7-10-14, cert. ef. 10-1-14

## 436-160-0410

### Electronic Medical Bill Data Transmission and Format Requirements

(1) The transmission data and format requirements are included in the IAIABC EDI Implementation Guide for Medical Bill Payment Records, Release 2.0 (Feb 1, 2014), and Appendices A and B of these rules. Oregon-specific information can be found on the division's Electronic Data EDI webpage: <http://www.cbs.state.or.us/wcd/operations/edi/ediindex.html>.

(2) Data elements are listed in Appendices A and B:

(a) Appendix A shows all medical bill data elements accepted by EDI in Oregon, and whether the data element is "Fatal Technical" (F), "Mandatory" (M), "Mandatory Conditional" (MC), "If Applicable/Available with Item Reject if Invalid" (AR), or "If Applicable/Available with Item Accept if Invalid" (AA) for each transaction type.

(b) Appendix B lists mandatory conditional data elements that are mandatory under specific conditions.

(3) Unless otherwise provided in these rules, the data elements must have the meaning provided in the IAIABC EDI Implementation Guide for Medical Bill Payment Records, Release 2.0, dated Feb. 1, 2014, Section 2; Health Care Claim (837).

(4) Transactions will be rejected if "Fatal Technical," "Mandatory," or "Mandatory Conditional" data elements are omitted, or include invalid values.

(5) Transactions will be rejected if "If Applicable/Available with Item Reject if Invalid" data elements include invalid values.

(6) Invalid "If Applicable/Available with Item Accept if Invalid" data elements will be ignored if they are included in a transaction.

[ED. NOTE: Appendices are available from the agency.]

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.264

Hist.: WCD 10-2007, f. 11-1-07, cert. ef. 1-1-08; 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 2-2009, f. 10-5-09, cert. ef. 1-1-10; WCD 7-2010, f. 10-1-10, cert. ef. 1-1-11; WCD 6-2013, f. 10-10-13, cert. ef. 7-1-14; WCD 1-2014, f. 2-14-14, cert. ef. 7-1-14; WCD 5-2014(Temp), f. 6-5-14, cert. ef. 7-1-14 thru 12-27-14; WCD 8-2014, f. 7-10-14, cert. ef. 10-1-14

## 436-160-0415

### Oregon ASC X12 837 Medical Bill Data Reporting Requirements

(1) Event reporting requirements:

(a) Medical bills, including interpreter bills under OAR 436-009, must be reported within 60 days of the date paid.

(b) Denied medical bills for accepted claims must be reported within 60 days of date of denial. Denied bills are defined as any bills in which there is a non-zero charge and a zero payment.

(c) Transactions must be received and accepted by the division within 60 days of either the date paid or the date denied to be considered timely reported. If a transaction is initially rejected it must be corrected, resubmitted, and accepted within the original 60 day time period to be considered timely reported.

(d) Cancellations must be reported as soon as the payer knows that a medical bill was sent in error.

(e) Corrections/Replacements must be reported within 60 days of changes to any of the "Fatal Technical," "Mandatory," or "Mandatory Conditional" data elements in Appendices A and B.

(f) Bills received by the insurer before Oct. 1, 2014, may be reported to the Division using the IAIABC reporting standard version 1.1.

(2) Data reporting requirements are described in Appendices A and B.

(3) Technical requirements are described on the division's Electronic Data EDI webpage for specifications on the Secure File Transfer Protocol (SFTP) requirements.

(4) Data Quality: The director will conduct electronic edits for blank or invalid data. Affected insurers are responsible for pre-screening the data

they submit to check that all the required information is reported and is formatted correctly. OAR 436-160-0420 describes the acceptance or rejection protocol for all reported medical bills. The insurer is responsible for timely correcting and resubmitting all rejected transactions for which law or rule require filing, reporting, or notice to the director.

(5) An insurer must request and receive authorization from the director to stop submitting a previously rejected transaction when the division determines the transaction is uncorrectable.

(6) The director will periodically review reported bill data to monitor insurer performance. If the director finds repeated or egregious violations of the reporting requirements of these rules the director may issue civil penalties under OAR 436-160-0445 and ORS 656.745.

(a) Medical bills must be reported timely. "Timely" means that an insurer reports medical bills as required by OAR 436-160-0415(1).

(b) Medical bills must be reported accurately. "Accurately" means that the reported medical bill data accepted by the division conforms to the reporting requirements of the Appendices A and B.

(c) The insurer may be subject to penalties for any reported medical bills that have not been accepted by the division or designated as uncorrectable under OAR 436-160-0415(5) within 180 days of the date of bill payment or denial.

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.264

Hist.: WCD 7-2010, f. 10-1-10, cert. ef. 1-1-11; WCD 6-2013, f. 10-10-13, cert. ef. 7-1-14; WCD 5-2014(Temp), f. 6-5-14, cert. ef. 7-1-14 thru 12-27-14; WCD 8-2014, f. 7-10-14, cert. ef. 10-1-14

## 436-160-0420

### Medical Bill Acknowledgement

(1)(a) The sender is expected to retrieve both TA1 and 999 interchange and functional acknowledgements (as defined by ASC X12) for each medical bill file submitted, unless technical errors in the file prevent 999 processing. In addition, the sender is expected to retrieve the 824 detailed acknowledgement, as defined by IAIABC Release 2.0 (Feb.1, 2014) for each medical bill file submitted, if at least one transaction has successfully passed the 999 edits.

(b) The detailed acknowledgement will indicate either an item accepted (IA) or an item rejected (IR) acknowledgement for each individual transaction.

(2) A TA1, 999 or 824 acknowledgement will be available for all transactions the division is unable to process, including but not limited to:

(a) An omitted mandatory data element;

(b) An improperly populated data element field, e.g., numeric data element field is populated with alpha or alphanumeric data, or is not a valid value according to the standards adopted in 436-160-0004;

(c) Transactions or electronic records within the transaction that require matching, and cannot be matched to the division's database, e.g., cancellation of an original bill that does not match the Unique Bill ID;

(d) Illogical data in mandatory or required conditional field, e.g., payment date is after reporting date;

(e) Duplicate transmission or duplicate transaction within the transmission;

(f) Invalid bill submission reason code; or

(g) Illogical event sequence relationship between transactions, e.g., cancellation transaction submitted before an original bill is accepted.

(3) A transaction accepted acknowledgement will be available for all transactions that are in a format capable of being processed by the division's information processing system and that are not rejected under section (2) of this rule.

(4) An insurer's obligation to report medical bill data for the purposes of this rule is not satisfied unless the division acknowledges acceptance of the transaction.

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.264

Hist.: WCD 10-2007, f. 11-1-07, cert. ef. 1-1-08; WCD 2-2009, f. 10-5-09, cert. ef. 1-1-10; WCD 7-2010, f. 10-1-10, cert. ef. 1-1-11; WCD 6-2013, f. 10-10-13, cert. ef. 7-1-14; WCD 5-2014(Temp), f. 6-5-14, cert. ef. 7-1-14 thru 12-27-14; WCD 8-2014, f. 7-10-14, cert. ef. 10-1-14

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**Rule Caption:** Adoption of rules governing electronic medical billing standards

**Adm. Order No.:** WCD 9-2014

**Filed with Sec. of State:** 7-14-2014

**Certified to be Effective:** 1-1-15

**Notice Publication Date:** 6-1-2014

# ADMINISTRATIVE RULES

**Rules Adopted:** 436-008-0001, 436-008-0004, 436-008-0005, 436-008-0010, 436-008-0015, 436-008-0020, 436-008-0025, 436-008-0030, 436-008-0040

**Subject:** The agency adopts OAR 436-008, Electronic Medical Billing, to establish uniform standards for electronic medical billing in the workers' compensation system, including:

- Adoption of national-level electronic medical billing standards for use in Oregon;
- Definition of terms used to explain electronic medical billing standards;
- Provision of an option for an insurer to become exempt from the requirement to accept electronic medical bills;
- Allowance for use of alternative billing formats if those formats include all of the data elements required under the standard;
- Description of how to track and submit related documentation (attachments);
- Prescription of standards for electronic medical bill acknowledgments, remittance advice, and explanations of benefits; and
- Explanation of the potential for application of civil penalties.

**Rules Coordinator:** Fred Bruyns—(503) 947-7717

## 436-008-0001

### Authority, Applicability, Purpose, and Administration of these Rules

(1) These rules are promulgated under the director's authority contained in ORS 656.726(4) and specific authority under ORS 656.252.

(2) These rules apply to all electronic medical billing transactions generated on or after the effective date of these rules.

(3) The purpose of these rules is to establish uniform guidelines for the exchange of electronic medical billing transactions within the workers' compensation system.

(4) The director may waive procedural rules as justice requires, unless otherwise obligated by statute.

(5) Orders issued by the division in carrying out the director's authority to enforce ORS chapter 656 are considered orders of the director.

Stat. Auth.: ORS 656.252, 656.254 & 656.726(4)

Stats. Implemented: ORS 656.252, 656.254 & 656.726(4)

Hist.: WCD 9-2014, f. 7-14-14, cert. ef. 1-1-15

## 436-008-0004

### Adoption of Standards

(1) The director adopts, by reference, the following electronic medical bill processing standards:

(a) Professional Billing:

(A) The Accredited Standards Committee X12 (ASC X12) Standards for Electronic Data Interchange (EDI) Type 3 Technical Reports (TR3);

(B) Health Care Claim: Professional (837), May 2006, ASC X12, 005010X222; and

(C) Type 3 Errata to Health Care Claim: Professional (837), June 2010, ASC X12, 005010X222A1.

(b) Institutional/Hospital Billing:

(A) The ASC X12 Standards for EDI TR3;

(B) Health Care Claim: Institutional (837), May 2006, ASC X12, 005010X223;

(C) Type 1 Errata to Health Care Claim: Institutional (837);

(D) ASC X12 Standards for EDI TR3, October 2007, ASC X12, 005010X223A1; and

(E) Type 3 Errata to Health Care Claim: Institutional (837), June 2010, ASC X12, 005010X223A2.

(c) Dental Billing:

(A) The ASC X12 Standards for EDI TR3;

(B) Health Care Claim: Dental (837), May 2006, ASC X12, 005010X224;

(C) Type 1 Errata to Health Care Claim: Dental (837);

(D) ASC X12 Standards for EDI Technical Report Type 3, October 2007, ASC X12, 005010X224A1; and

(E) Type 3 Errata to Health Care Claim: Dental (837), June 2010, ASC X12, 005010X224A2.

(d) Retail Pharmacy Billing:

(A) The Telecommunication Standard Implementation Guide, Version D, Release 0 (Version D.0), August 2007, National Council for Prescription Drug Programs (NCPDP); and

(B) The Batch Standard Batch Implementation Guide, Version 1, Release 2 (Version 1.2), January 2006, NCPDP.

(e) Remittance:

(A) The ASC X12 Standards for EDI TR3, Health Care Claim Payment/Advice (835), April 2006, ASC X12, 005010X221; and

(B) Type 3 Errata to Health Care Claim Payment/Advice (835), June 2010, ASC X12, 005010X221A1.

(2) The director adopts, by reference, the following electronic standards for medical bill acknowledgments:

(a) The ASC X12 Standards for EDI TA1 Interchange Acknowledgment contained in the standards adopted under section (1) of this rule;

(b) The ASC X12 Standards for EDI TR3, Implementation Acknowledgment for Health Care Insurance (999), June 2010, ASC X12, 005010X231A1;

(c) The ASC X12 Standards for EDI TR3, Health Care Claim Acknowledgment (277CA), January 2007, ASC X12, 005010X214; and

(d) Electronic responses to NCPDP transactions, and the response contained in the standards adopted under subsection (1)(d).

(3) The director adopts, by reference, the ASC X12N 275 — Additional Information to Support a Health Claim or Encounter, Version 005010, February 2008, 005010X210, for attachments to medical bills.

(4) The director adopts, by reference, the ASC X12N/2013-57, effective Dec. 2013, Code Value Usage in Health Care Claim Payments and Subsequent Claims Technical Report Type 2.

(5) ASC X12N and the ASC X12 standards for EDI may be purchased from the ASC X12, 7600 Leesburg Pike, Suite 430, Falls Church, VA 22043; telephone 703-970-4480; and fax 703-970-4488. They are also available for purchase through the internet at <http://www.X12.org>.

(6) Retail pharmacy standards may be purchased from the NCPDP, 9240 East Raintree Drive, Scottsdale, AZ 85260, telephone 480-477-1000; fax 480-767-1042. They are also available, for purchase, through the Internet at <http://www.ncdp.org>.

(7) The director adopts the Oregon Workers' Compensation Division Electronic Billing and Payment Companion Guide Release 1.0, Jan. 1, 2015. A copy of the guide is available at the following website: <http://www.cbs.state.or.us/wcd/operations/edi/ediindex.html>.

(8) Copies of the standards referenced in this rule are available for review during regular business hours at the Workers' Compensation Division, 350 Winter Street NE, Salem OR 97301, 503-947-7717.

Stat. Auth.: ORS 656.252, 656.254 & 656.726(4)

Stats. Implemented: ORS 656.252 & 656.254

Hist.: WCD 9-2014, f. 7-14-14, cert. ef. 1-1-15

## 436-008-0005

### Definitions

For the purpose of these rules and the Oregon Electronic Billing and Payment Companion Guide:

(1) "Clearinghouse" means an entity that is an authorized agent of the insurer or health care provider, including billing services, re-pricing companies, community health management information systems or community health information systems, and "value-added" networks and switches that does either of the following functions:

(a) Processes or facilitates the processing of health information received from another entity in a nonstandard format or containing nonstandard data content into standard data elements or a standard transaction.

(b) Receives a standard transaction from another entity and processes or facilitates the processing of health information into nonstandard format or nonstandard data content for the receiving entity.

(2) "Companion guide" means the Oregon Workers' Compensation Division Electronic Billing and Payment Companion Guide adopted by the division in these rules that provides standards for workers' compensation electronic billing transactions.

(3) "Complete electronic bill submission" means an electronic medical billing transaction that is populated with current and valid values defined in the applicable standard set forth in OAR 436-008-0004 that:

(a) Includes the correct billing format, with the correct billing code sets;

(b) Is transmitted in compliance with all necessary format requirements; and

(c) Contains, in legible text, all supporting documentation that is expressly required by law or can reasonably be expected by the payer or its agent under the jurisdiction's law.

(4) "Days" means calendar days. For calendar days, the first day is not included. The last day is included unless it is a Saturday, Sunday, or legal holiday. In that case, the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday. Legal holidays are those listed in ORS 187.010 and 187.020.

# ADMINISTRATIVE RULES

(5) "Director" means the director of the Department of Consumer and Business Services.

(6) "Division" means the Workers' Compensation Division of the Department of Consumer and Business Services.

(7) "Electronic" refers to a communication between computerized data exchange systems that complies with the standards set forth in these rules.

(8) "Explanation of benefits (EOB)" means an electronic remittance advice (ERA) or notification, sent or made available electronically by the insurer or an authorized agent of the insurer, to the health care provider, health care facility, or third-party biller or assignee regarding payment or denial of a bill, reduction of a bill, or refund.

(9) "Insurer" means:

(a) The State Accident Insurance Fund Corporation;

(b) An insurer authorized under ORS chapter 731 to transact workers' compensation insurance in Oregon;

(c) An insurer-authorized agent or payer;

(d) An assigned claims agent selected by the director under ORS 656.054; or

(e) An employer or employer group that has been certified under ORS 656.430 meeting the qualifications of a self-insured employer under ORS 656.407.

(10) "Medical Bill" means a statement of charges for medical services.

(11) "Payer" means the insurer or an entity authorized to make payments on behalf of the insurer.

(12) "Supporting documentation" means those documents necessary for the insurer to process a bill, including but not limited to medical reports and records, evaluation reports, narrative reports, assessment reports, progress report/notes, chart notes, hospital records, and diagnostic test results.

(13) "Trading partner" means any entity that exchanges information electronically with another entity.

Stat. Auth.: ORS 656.252 & 656.726(4)

Stats. Implemented: ORS 656.726(4)

Hist.: WCD 9-2014, f. 7-14-14, cert. ef. 1-1-15

## 436-008-0010

### Electronic Medical Bills

(1) Beginning Jan. 1, 2015, insurers must accept and process all electronically transmitted medical bills in accordance with these rules, the standards adopted under OAR 436-008-0004, and the companion guide.

(2) An insurer is exempt from the requirement to accept medical bills electronically from health care providers on or after Jan. 1, 2015, if a written notice is sent to the division, and approved by the director, on or before close of business on Dec. 31, 2014. The notice must explain in detail that the cost of electronic medical bill implementation will create an unreasonable financial hardship.

(3) Health care providers that elect to submit electronic medical bills to insurers must do so in accordance with these rules, the standards adopted under OAR 436-008-0004, and companion guide.

(4) All electronic medical billing transactions must be populated with current and valid values defined in the applicable standard set forth in OAR 436-008-0004.

(5) The health care provider, health care facility, third-party biller or assignee and the insurer may mutually agree to use nonstandard formats, but those formats must include all data elements required under the applicable standard, as set forth in OAR 436-008-0004.

(6) Health care providers and insurers may contract with other entities for electronic medical bill processing.

(7) Insurers and health care providers are responsible for the acts or omissions of their agents executed in the performance of electronic medical billing services.

(8) The data elements transmitted as part of a Trading Partner Agreement must at a minimum contain all the same required data elements found within the ASC X12 Type 3 Technical Reports and the jurisdiction-specific companion guide.

Stat. Auth.: ORS 656.252, 656.254 & 656.726(4)

Stats. Implemented: ORS 656.252 & 656.254

Hist.: WCD 9-2014, f. 7-14-14, cert. ef. 1-1-15

## 436-008-0015

### Electronic Medical Bill Attachments or Documentation

(1) A unique attachment indicator number must be assigned to all documentation. The attachment indicator number populated on the document must include the report type code, the report transmission code, the attachment control qualifier, and the attachment control number.

(2) Documentation in support of electronic medical bills may be submitted by fax, secure email, regular mail, electronic transmission using the prescribed format, or by a mutually agreed upon format.

(3) Documentation in support of electronic medical bills must be submitted within five days of submission of the bill and include the following elements:

(a) Patient name (ill or injured worker);

(b) Date of birth (if available);

(c) Employer name;

(d) Insurer name;

(e) Date of service;

(f) Claim number (if no claim number then use "UNKNOWN"); and

(g) Unique attachment indicator number.

Stat. Auth.: ORS 656.252, 656.254 & 656.726(4)

Stats. Implemented: ORS 656.252 & 656.254

Hist.: WCD 9-2014, f. 7-14-14, cert. ef. 1-1-15

## 436-008-0020

### Electronic Medical Bill Acknowledgements

(1) If the electronic submission does not conform to the standards adopted under OAR 436-008-0004(1), then the insurer must send an acknowledgment adopted under 436-008-0004(2)(a) or 436-008-0004(2)(b) to the health care provider. This acknowledgement must be sent within one day of receipt of the electronic bill unless the electronic submission lacks sufficient identifiers to create an acknowledgment.

(2) If the electronic submission does conform to a standard adopted under OAR 436-008-0004(1), then the insurer must send an acknowledgment adopted under 436-008-0004(2)(c) to the health care provider within two days.

(3) Any acknowledgment of a medical bill, as provided in (1) or (2) of this rule is not an admission of liability by the insurer.

Stat. Auth.: ORS 656.252, 656.254 & 656.726(4)

Stats. Implemented: ORS 656.252 & 656.254

Hist.: WCD 9-2014, f. 7-14-14, cert. ef. 1-1-15

## 436-008-0025

### Electronic Medical Bill Payments

(1) Insurers that accept and process a complete electronic bill for services, under OAR 436-008-0010(1)(a) or (b), must pay for treatment related to the injury or disease, provided or authorized by the treating health care provider, on accepted claims within 14 days of any action causing the service to be payable, or within 45 days of receipt of the electronic bill, whichever is later.

(2) If an insurer requires additional information before a payment decision can be made, a request for this information must be made to the medical provider within 20 days of receipt of the bill.

(3) The insurer must provide an explanation (EOB) of services being paid or denied.

Stat. Auth.: ORS 656.252, 656.254 & 656.726(4)

Stats. Implemented: ORS 656.252 & 656.254

Hist.: WCD 9-2014, f. 7-14-14, cert. ef. 1-1-15

## 436-008-0030

### Electronic Remittance Advice; Explanation of Benefits

(1) An electronic remittance advice (ERA) or notification is an explanation of benefits (EOB) that the insurer submits electronically regarding payment or denial of a bill, reduction of a bill, or refund. An insurer must submit an EOB no later than five days after generating a payment.

(2) The EOB must include:

(a) The amount of payment for each service billed. When the payment covers multiple patients, the explanation must clearly separate and identify payments for each patient;

(b) The specific reason for non-payment, reduced payment, or discounted payment for each service billed; and

(c) An Oregon or toll-free phone number for the insurer or its representative, and a statement that the insurer or its representative must respond to a health care provider's payment question within 48 hours, excluding weekends and legal holidays.

(3) The insurer must make available, to health care providers, the applicable information specified under OAR 436-009-0030(3)(c)(A) through (F), including:

"If you disagree with this decision about this payment, please contact {the insurer or its representative} first. If you are not satisfied with the response you receive, you may request administrative review by the director of the Department of Consumer and Business Services. Your request for review must be made within 90 calendar days of the send/receive date of this explanation. To request a review, provide information that shows what you believe is incorrect about the payment, and send this information and

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required supporting documentation to the Workers' Compensation Division, Medical Resolution Team, P.O. Box 14480, Salem, OR 97309-0405. You may fax the request to the director at 503-947-7629. You must also send a copy of the request to the insurer. You should keep a copy of this information for your records."

(4) Any information required under sections (1) through (3) of this rule that cannot be submitted on the electronic EOB must be made available on the insurer's website or by any other means reasonably convenient for the EOB recipient.

Stat. Auth.: ORS 656.252, 656.254 & 656.726(4)  
Stats. Implemented: ORS 656.252 & 656.254  
Hist.: WCD 9-2014, f. 7-14-14, cert. ef. 1-1-15

## 436-008-0040

### Assessment of Civil Penalties

Under ORS 656.745, the director may assess a civil penalty against an insurer that fails to comply with ORS Chapter 656, the director's rules, or orders of the director.

Stat. Authority: ORS 656.726(4)  
Stat. Implemented: ORS 656.254 & 656.745  
Hist.: WCD 9-2014, f. 7-14-14, cert. ef. 1-1-15

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## Department of Corrections

### Chapter 291

**Rule Caption:** Identification and Management of Inmates that Present with Nonconforming Gender at Intake

**Adm. Order No.:** DOC 15-2014(Temp)

**Filed with Sec. of State:** 6-25-2014

**Certified to be Effective:** 6-25-14 thru 12-22-14

**Notice Publication Date:**

**Rules Adopted:** 291-210-0010, 291-210-0020, 291-210-0030

**Subject:** These temporary rules are necessary to establish the department's policy and procedures for the identification, assessment, review, and management of inmates that present with nonconforming gender at intake to the Department of Corrections.

**Rules Coordinator:** Janet R. Worley — (503) 945-0933

## 291-210-0010

### Authority, Purpose, and Policy

(1) Authority: The authority for these rules is granted to the Director of the Department of Corrections in accordance with ORS 179.040, 423.020, 423.030, and 423.075.

(2) Purpose: The purpose of these rules is to establish Department of Corrections policy and procedures for the identification, assessment, review, and management of inmates that present with nonconforming gender at intake.

(3) Policy: Within the inherent limitations of resources, and the need to maintain facility security, order and discipline, the health and safety of inmates and staff, and to further inmate rehabilitation, it is the policy of the Department of Corrections, based on available information, to:

(a) Identify inmates that present with nonconforming gender upon delivery to the Department of Corrections when possible during intake processing; and

(b) Assess, review, and manage inmates that present with nonconforming gender at intake on an case-by-case basis, in a respectful manner, considering each inmate's individual circumstances, including but not limited to the inmate's physical sexual characteristics, gender identification, physical presentation, behavior and programming needs.

Stat Auth: ORS 179.040, 423.020, 423.030 & 423.075  
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075  
Hist.: DOC 15-2014(Temp), f. & cert. ef. 6-25-14 thru 12-22-14

## 291-210-0020

### Definitions

(1) Gender: The socially constructed roles, behaviors, activities, and attributes that a given society typically or historically assigns to men and women.

(2) Gender Identity: The actual and perceived gender of an individual regardless of whether the individual's gender identity, appearance, expression or behavior differs from that traditionally associated with the individual's sex at birth.

(3) Nonconforming Gender: A person's physical appearance and characteristics and/or behaviors that do not conform to those typically associated with a person's sex at birth or traditional societal gender expectations.

(4) Nonconforming Gender Review Committee: A working group of ODOC officials that reviews and makes recommendations to the Assistant

Director for Operations or designee for appropriate housing assignments for inmates that staff has identified as presenting with nonconforming gender.

(5) Physical Sexual Characteristics: The presence and type of primary and secondary sexual characteristics (i.e., genitals, developed breasts, and hair distribution) that are typically used to define and classify a person's sex as male or female.

Stat Auth: ORS 179.040, 423.020, 423.030 & 423.075  
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075  
Hist.: DOC 15-2014(Temp), f. & cert. ef. 6-25-14 thru 12-22-14

## 291-210-0030

### Identification, Assessment, Review, and Management of Inmates that Present with Nonconforming Gender at Intake

(1) Identification at Intake: Staff shall seek to identify inmates that present with nonconforming gender upon delivery to the Department of Corrections during intake processing, based on available information from the county, the inmate (including the inmate's stated gender identity, if any), and as developed by staff.

(2) Appropriate and Professional Questioning: Staff shall question inmates regarding their sex and gender identity only when necessary to develop information for making appropriate intake and housing assignments, classification assignments, programming assignments; to provide health care and health assessments; and as necessary for the inmate's health or safety, or for the safe, secure, and orderly operation of the facility. Staff shall question inmates in a private and professional manner to avoid subjecting the inmate to the risk of possible abuse or ridicule.

(3) Initial Placement in Holding Cell: When staff identifies an inmate as presenting with nonconforming gender during intake processing, staff shall place the inmate in a holding cell in receiving and discharge to provide for the inmate's safety and to provide the inmate with a measure of privacy pending further review.

(4) Skin Searches:

(a) Skin searches are performed by appropriate security staff on each inmate upon the inmate's delivery to the facility. Ordinarily, a security staff member of the same sex as the inmate will be assigned to conduct the skin search.

(b) If the intake sergeant cannot determine the sex of the inmate, the Intake Sergeant shall ask the inmate to identify which gender of security staff member they prefer to conduct the skin search. If the inmate does not provide the requested information, the intake sergeant shall notify the officer-in-charge (OIC). The OIC shall then assign a security staff member of an appropriate sex to conduct the skin search of the inmate based on the information available and discussion with the inmate.

(c) If staff has not determined that an inmate presents with nonconforming gender, and security staff discover during the conduct of a skin search that the inmate has physical sexual characteristics of the sex opposite of the security staff member conducting the search, the security staff member will immediately cease conducting the search and notify the intake sergeant. The intake sergeant shall follow the steps in subsection (b) above to conduct the skin search.

(5) Intake Housing Assignment:

(a) Following initial placement in a holding cell, an inmate identified by staff as presenting with nonconforming gender during intake processing shall be assigned to a single cell in the Infirmary, on a space available basis, until the appropriate housing for the inmate has been staffed by the NonConforming Gender Review Committee.

(b) If there are no infirmary beds available, the functional unit manager or designee will assign the inmate to appropriate alternative housing in the facility, and document the reasons for the alternative housing assignment.

(6) Clothing at Intake Center: Inmates that have been identified by staff as presenting with nonconforming gender at intake will be issued the following clothing to wear during intake processing - two sets of scrubs; two t-shirts; sweatshirt; two bras (if requested or needed); underwear (type issued based on inmate request); pajamas (type issued based on inmate request); and socks and intake shoes.

(7) Recreation at Intake Center: All inmates will be afforded out of cell time equal to the unit they are being housed in or as facility operation allows. A minimum out of cell time will be three (3) times a week.

(8) Shower and Hygiene at Intake Center: Inmates that have been identified by staff as presenting with nonconforming gender at intake shall shower separately from other inmates.

Stat Auth: ORS 179.040, 423.020, 423.030 & 423.075  
Stats Implemented: ORS 179.040, 423.020, 423.030 & 423.075  
Hist.: DOC 15-2014(Temp), f. & cert. ef. 6-25-14 thru 12-22-14

# ADMINISTRATIVE RULES

**Rule Caption:** Periodic Reviews for Inmates Assigned to the Intensive Management Unit

**Adm. Order No.:** DOC 16-2014(Temp)

**Filed with Sec. of State:** 7-1-2014

**Certified to be Effective:** 7-1-14 thru 12-28-14

**Notice Publication Date:**

**Rules Amended:** 291-055-0005, 291-055-0010, 291-055-0014, 291-055-0019, 291-055-0020, 291-055-0025, 291-055-0031, 291-055-0040, 291-055-0045, 291-055-0050

**Subject:** These temporary rules are necessary to modify the department's process for conducting meaningful periodic reviews of inmates assigned to the Intensive Management Unit (IMU). Other changes are necessary to reflect operational and organizational changes within the department.

**Rules Coordinator:** Janet R. Worley—(503) 945-0933

## 291-055-0005

### Authority, Purpose, and Policy

(1) Authority: The authority for these rules is granted to the Director of the Department of Corrections in accordance with ORS 179.040, 423.020, 423.030, and 423.075.

(2) Purpose: The purpose of these rules is to:

(a) Establish Department of Corrections policy and procedures for the assignment of custody Level 5 inmates to special security housing and programs in a designated Intensive Management Unit (IMU) or IMU status cells separate from general population housing in Department of Corrections facilities to provide the maximum level of inmate security, control and supervision; and

(b) Establish standards for the operation and management of IMU and IMU status cells.

(3) Policy: It is the policy of the Department of Corrections to:

(a) Assign custody Level 5 inmates, or inmates who are under investigation for or who have been charged with the in-custody murder or assault of another inmate or staff, to special security housing and programs in a designated IMU or IMU status or cells separate from general population housing in Department of Corrections facilities to provide the maximum level of inmate security, control and supervision as provided in these rules.

(b) Conduct meaningful periodic reviews of an inmate's status and continued assignment to an IMU or IMU status cells as provided in these rules.

(c) Temporarily reassign inmates assigned to an IMU or IMU status cell may be temporarily assigned to other treatment, program or service units (i.e., Infirmary, Administrative Housing, Disciplinary Segregation, mental health special housing) for treatment or programming as deemed necessary or advisable by the department.

(d) Inmates assigned to an IMU or IMU status cells shall have an opportunity for administrative review of their custody Level 5 classification/ assignment to IMU as provided in the department's rule on Classification (Inmate), OAR 291-104.

Stat Auth: ORS 179.040, 423.020, 423.030, & 423.075

Stats. Implemented: ORS 179.040, 423.020, 423.030, & 423.075

Hist.: CD 13-1991, f. & cert. ef. 6-7-91; CD 21-1994, f. 11-16-94, cert. ef. 12-1-94; DOC 7-2000(Temp), f. 2-24-00, cert. ef. 2-24-00 thru 8-22-00; DOC 20-2000, f. & cert. ef. 8-18-00; DOC 10-2002(Temp), f. & cert. ef. 7-10-02 thru 1-6-03; DOC 14-2002, f. & cert. ef. 11-8-02; DOC 16-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14

## 291-055-0010

### Definitions

(1) Intensive Management: The status of a custody Level 5 inmate assigned to special security housing and programs in a designated intensive management unit or cell separate from general population housing units and cells in Department of Corrections facilities.

(2) IMU Inmate Program Committee: An institution committee that reviews an inmate's movement among the program levels. The Assistant Superintendent of Correctional Rehabilitation will chair the committee. The committee will consist of staff from Correctional Rehabilitation, Behavioral Health Services, Security Threat Management, Religious Services, and security. Representatives from the Office of Population Management, Education section, Health Services, and Hearings may also attend.

(3) IMU Shift Supervisor: The person responsible for the daily operation of the IMU in the absence of the IMU manager.

(4) Intensive Management Unit (IMU) Manager: The officer-in-charge or designee responsible for the daily operation of the IMU.

(5) Officer-in-Charge: The person designated by the functional unit manager to supervise the facility and make operational decisions in accor-

dance with rule or procedure during periods when the functional unit manager or officer-of-the-day are not readily available.

(6) Serious Management Concerns: Participation either individually, or in a group, in behavior which poses a significant threat to the safe and secure operation of the facility, including, but not limited to,

(a) Threatening or inflicting bodily injury on another person;

(b) P-posing an immediate risk of escape;

(c) Promoting or engaging in disruptive group behavior;

(d) Promoting security threat group activities; or

(e) Being involved in any other activity that could significantly threaten the safe and secure operation of the facility; and which poses a sufficient threat that such behavior in the judgment of the department can only be adequately controlled in appropriate special housing.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075

Hist.: CD 13-1991, f. & cert. ef. 6-7-91; CD 21-1994, f. 11-16-94, cert. ef. 12-1-94; DOC 20-2000, f. & cert. ef. 8-18-00; DOC 7-2008(Temp), f. & cert. ef. 4-1-08 thru 9-28-08; Administrative correction 10-21-08; DOC 16-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14

## 291-055-0014

### Selection of Intensive Management Unit Staff

(1) Selection Criteria:

(a) To qualify for a post which is solely assigned to an Intensive Management Unit, the employee:

(A) Must have successfully completed trial service;

(B) Must have achieved a satisfactory on a special performance appraisal at the time of application and assignment to IMU. At a minimum, the staff member must meet the following criteria:

(i) Have demonstrated maturity and tolerance;

(ii) Have expressed a constructive interest in working with inmates in IMU;

(iii) Have demonstrated the ability to work with inmates through conflict-reducing and conflict-control skills; and

(iv) Have demonstrated the ability to use good judgment.

(2) Assignments to Intensive Management Unit Posts:

(a) Assignment to Intensive Management Unit posts will be made by the functional unit manager or designee and will be reviewed at least annually.

(b) Rotation of staff assigned to Intensive Management Unit posts may occur as it is found to be in the best interest of the employee or the facility, upon determination by the functional unit manager.

(c) Temporary assignment to Intensive Management Unit posts will be made by the functional unit manager or designee. Temporary assignments shall be given only to employees who meet the initial qualifications specified in this rule. Whenever possible, temporary assignments will be given only to employees who have successfully completed training specified by the Department of Corrections.

(3) Any exceptions to this rule for staff selection to an Intensive Management Unit post must be approved by the Assistant Director for Operations or designee prior to assignment.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075

Hist.: DOC 20-2000, f. & cert. ef. 8-18-00; DOC 16-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14

## 291-055-0019

### IMU Assignments

(1) Custody Level 5 inmates who have received a sentence other than a sentence of death, or who are pending retrial in a case in which a death sentence may be re-imposed, shall be assigned to an IMU or IMU status cell. Inmates who have received a sentence of death (inmates on death row status), or who are under investigation for or who have been charged with the in-custody murder of another inmate or staff, may be assigned housing in an IMU or IMU status cell.

(a) An inmate demonstrates the need for custody Level 5 housing by demonstrating behaviors that in the judgment of the department cause serious management concerns.

(b) Inmates assigned to an IMU or IMU status cell may be temporarily assigned to other housing, treatment, program or service units (i.e., infirmary, Administrative Housing, Disciplinary Segregation, mental health special housing, Death Row) for housing, treatment, or programming as deemed necessary or advisable by the department.

(2) Assignment Request: A request for assignment to an IMU shall be initiated if an inmate scores custody Level 5, or when an override request to custody Level 5 is made.

(a) A Classification Summary, Intensive Management Unit Administrative Action Sheet (CD8a) and all pertinent information which

# ADMINISTRATIVE RULES

demonstrates the need for IMU assignment shall be sent to the Office of Population Management.

(b) Staff shall indicate the reason for referral and a short statement describing the reason for requesting an IMU assignment. The Office of Population Management will approve or deny the request.

(3) Documentation of Decisions: All decisions by the Office of Population Management Administrator or designee will be documented on the Intensive Management Unit Administrative Action Sheet (CD 8a) and returned to the facility initiating the request. The signed copy of the action sheet shall be filed in the inmate's IMU file at the Office of Population Management.

(4) Notice: Decisions by the Office of Population Management Administrator or designee that assign an inmate to IMU status will be sent to the inmate along with a Classification Summary (CD1120D), Intensive Management Unit Administrative Action Sheet (CD8a), Request for Administrative Review (CD1120aD), and a description of the inmate's review options.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075

Hist.: CD 21-1994, f. 11-16-94, cert. ef. 12-1-94; CD 21-1994, f. 11-16-94, cert. ef. 12-1-94; DOC 7-2000(Temp), f. 2-24-00, cert. ef. 2-24-00 thru 8-22-00; DOC 20-2000, f. & cert. ef. 8-18-00, Renumbered from 291-055-0011; DOC 10-2002(Temp), f. & cert. ef. 7-10-02 thru 1-6-03; DOC 14-2002, f. & cert. ef. 11-8-02; DOC 9-2013(Temp), f. & cert. ef. 10-23-13 thru 4-21-14; DOC 10-2014, f. & cert. ef. 4-22-14; DOC 16-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14

## 291-055-0020

### Programming Levels of Intensive Management Unit Inmates

(1) An inmate's adjustment and behavior while housed in the Intensive Management Unit will determine the inmate's service and activities program level. The schedule for programs and services are as follows:

(a) Level One basic services provided to Intensive Management Unit (IMU) inmates:

(A) Correspondence and photos (excluding publications): As received through the mail after assignment to level one.

(B) Canteen: Envelopes ordered every two weeks.

(C) Legal services: As required in accordance with the department's rule on Legal Affairs (Inmate), OAR 291-139.

(D) Religious services and materials: As requested and meeting security requirements.

(E) Personal hygiene/shower: Three times per week.

(F) Treatment/Programming/Educational Services: As deemed appropriate to the individual treatment program and meeting security requirements.

(G) Library: One paperback book on a scheduled exchange basis.

(b) Level Two services and activities available to IMU inmates in addition to level one basic services:

(A) Visiting: Two one-hour sessions per month. No more than one visiting session allowed per week.

(B) Recreation: 40 minutes per day, five days per week.

(C) Library: Two paperback books on an as needed, exchange basis.

(D) Canteen: \$15 worth of canteen items ordered every two weeks.

(E) Educational material: As requested, approved and meeting security requirements.

(c) Level Three services and activities available to IMU inmates in addition to level two services:

(A) Visiting: Three one-hour sessions per month. No more than one visiting session allowed per week.

(B) Canteen: \$20 of canteen items ordered every two weeks.

(C) Personal property: One approved property storage container.

(D) Radio/headphones: One time issue, which remains state property.

(E) Work assignments.

(d) Level Four services and activities available to IMU inmates in addition to level three services:

(A) Visiting: Four one-hour sessions per month. No more than one visiting session allowed per week.

(B) Canteen: \$30 worth of canteen items ordered every two weeks.

(C) Personal property: No more than two approved storage containers.

(2) Program Level Criteria:

(a) The Assistant Superintendent, Correctional Rehabilitation or designee, will establish criteria for the various program levels.

(b) All inmates assigned to an Intensive Management Unit or IMU status cell will begin on program level two. The IMU Inmate Program Committee will evaluate each inmate's legal or investigative status, conduct, program involvement and behavior periodically, at least every 90 days, to determine further and appropriate program level assignment.

(c) Demotions:

(A) An inmate may be demoted one or more program levels for conduct or behavior which threatens the safe, secure and orderly operation of the Intensive Management Unit or failure to participate in programs. An inmate will not be demoted to a level one strictly for failure to participate in a program. Any demotion to level one shall be based on inmate behavior.

(B) If immediate action is necessary, the IMU shift supervisor may take appropriate action and recommend a reduction in an inmate's program level and submit it to the Intensive Management Unit manager for approval. All demotions will be reviewed by the IMU Inmate Program Committee for final approval.

(d) Inmate Program Committee Guidelines for Level Advancement: The following criteria will be considered when evaluating an inmate's adjustment in IMU for program level advancement:

(A) Level One: One month at level one with no major rule violation and no more than one minor rule violation may earn promotion to:

(B) Level Two: Two months at level two with no major rule violation and no more than one minor rule violation and active participation in prescribed programming may earn promotion to:

(C) Level Three: Three months at level three with no major rule violation and no more than one minor rule violation and a successful completion of prescribed programs may earn promotion to:

(D) Level Four: Maintain level four with no major rule violation and no more than one minor rule violation.

(3) Immediately following any action of self destruction, a medical or psychological services staff member will be consulted by the IMU Manager to determine if the inmate should be recommended for transfer to mental health special housing.

(4) IMU status inmates will be permitted to leave their cell as appropriate to their program level for: visits, exercise, showers, medical, dental, or mental health services, hearings, interviews, or other reasons as authorized by the IMU Manager.

(a) The Assistant Superintendent of Security will assign escort supervision as deemed appropriate.

(b) IMU inmates will not be permitted to leave their cells without approval from the IMU Manager, or unless previously scheduled to do so for program participation. The inmate will be in restraints at all times while being escorted inside and outside the unit. Routine staff interviews may be accomplished at the inmate's cell.

(5) The IMU Manager or designee will conduct a tour of the Intensive Management Unit at least once per shift. Inmates may address questions to the IMU Manager at this time.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075

Hist.: CD 13-1991, f. & cert. ef. 6-7-91; CD 21-1994, f. 11-16-94, cert. ef. 12-1-94; DOC 2000, f. & cert. ef. 8-18-00; DOC 16-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14

## 291-055-0025

### Situational Reviews

Individual inmate assessments may be requested by the Assistant Superintendent, Correctional Rehabilitation Unit, or designee or the IMU Inmate Program Committee at any time. Inmates requesting mental health services may be referred to qualified Behavioral Health Services personnel pursuant to recommendation of Behavioral Health Services program staff or the Assistant Superintendent, Correctional Rehabilitations Unit, or designee.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075

Hist.: CD 13-1991, f. & cert. ef. 6-7-91; CD 21-1994, f. 11-16-94, cert. ef. 12-1-94; DOC 2000, f. & cert. ef. 8-18-00; DOC 16-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14

## 291-055-0031

### Retention/Re-assignment from an IMU or IMU Status Cell

(1) When considering an inmate for re-assignment from an IMU or IMU status cell to other appropriate housing, the IMU Inmate Program Committee will consider the inmate's adjustment within IMU, the nature and severity of the high category misconduct, length of time in IMU, and past history. The committee may also consider the degree of participation in self-improvement programs: mental health counseling, anger management, education, job assignments, alcohol/drug abuse therapy, assessment and evaluation, behavioral contracts, security threat group disassociation, communicable disease counseling, or other institutional management concerns.

(2) Periodic Review:

(a) The IMU IPC shall review each inmate assigned to an IMU or IMU status cell periodically, at least every 90 days, or within 30 days of the

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inmate obtaining program level four status, to determine if they will be retained in or re-assigned from an IMU or IMU status cell to other appropriate housing.

(b) Prior to the review and recommendation by the IMU Inmate Program Committee, the IMU status inmate will receive notice and be allowed an opportunity to provide written submission to the IPC for their consideration.

(c) The IMU Inmate Program Committee shall submit a written recommendation to either retain or reassign an inmate from IMU or an IMU status cell to the Office of Population Management Administrator or designee. A completed IMU 90 Day Review (CD1683) must be sent to the Office of Population Management describing the reason(s) and justification for the inmate to be either retained on long-term status or re-assigned from IMU or an IMU status cell.

(d) The Office of Population Management Administrator or designee shall make a decision to retain the inmate in IMU or an IMU status cell or assign the inmate to other appropriate housing. The Office of Population Management Administrator's or designee's decision is final and not subject to further review.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075  
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075  
Hist.: CD 13-1991, f. & cert. ef. 6-7-91; CD 21-1994, f. 11-16-94, cert. ef. 12-1-94; DOC 20-2000, f. & cert. ef. 8-18-00; DOC 16-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14

## 291-055-0040

### Property

(1) Any personal property, as defined in the Department of Corrections rule on Personal Property Control and Disposition (Inmate), OAR 291-117, not permitted in the cell of any Intensive Management Unit inmate will be properly protected in a designated property room. Upon release from IMU, the inmate shall check his/her personal property and sign the property sheet.

(2) The amount of personal property allowed depends upon each inmate's programming level. In addition to authorized issued items, the following personal property is authorized:

- (a) Storage container in which all authorized property will be kept;
  - (b) Letters;
  - (c) Photographs;
  - (d) Books, magazines, and newspapers;
  - (e) Envelope(s);
  - (f) Pen and paper;
  - (g) Canteen items purchased after admission to IMU;
  - (h) Personal care items on the IMU canteen list (soap, tooth powder, toothbrush, comb, toilet paper);
  - (i) Educational, treatment or psychological services program material;
  - (j) Radio and headphones; and
  - (k) Legal materials.
- (3) Bedding: One mattress, one pillow, one pillow case, two sheets, one towel, and blanket(s) as needed.
- (4) Clothing: One set of undergarments, coverall, and footwear.
- (5) Intensive Management Unit inmates will be permitted to retain basic personal health items (dentures, prescribed eye wear, hearing aids and approved prosthetic devices).

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075  
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075  
Hist.: CD 13-1991, f. & cert. ef. 6-7-91; CD 21-1994, f. 11-16-94, cert. ef. 12-1-94; DOC 20-2000, f. & cert. ef. 8-18-00; DOC 16-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14

## 291-055-0045

### Services, Programs and Activities

(1) Basic: The following basic programs and services will be provided to all inmates in IMU unless compelling security or safety reasons dictate otherwise.

- (a) Food:
  - (A) Except when under special diet specifically prescribed by the medical officer, each IMU inmate shall receive food prepared in accordance with the Department of Corrections rule on Food Service Programs, OAR 291-061.
  - (B) Food will be delivered to each inmate in his/her cell by a staff member.
  - (C) Food shall never be used as punishment.
  - (D) Intensive Management Unit inmates who intentionally misuse food or eating utensils may be subject to the provisions of the department's rule governing Controlled Feeding, OAR 291-083.
- (b) Clothing: A clean set of undergarments and coveralls will be provided on an exchange basis three times a week.

(c) Bedding: Clean sheets and one pillow case will be exchanged on a weekly basis. A clean towel will be provided on an exchange basis at least three times per week.

(d) Personal Hygiene/Shower: Inmates will be allowed to shower, shave and obtain necessary personal care items three times a week. Arrangements for haircuts will be arranged on a regularly scheduled basis.

(e) IMU inmates shall be provided correspondence privileges in accordance with the Department of Corrections rule on Mail (Inmate), OAR 291-131. Inmates may submit Interview Requests and grievances. Grievances will be handled in a manner prescribed by the Department of Corrections rule on Grievance Review System (Inmate), OAR 291-109.

(f) Legal Services: IMU inmates may pursue their legal activities in accordance with the Department of Corrections rule on Legal Affairs (Inmate), OAR 291-139. Legal material will be provided. Abuse of materials may result in disciplinary action. Attorney visits must be scheduled in advance.

(g) Religious: IMU inmates will be allowed to receive religious guidance if requested. Religious Services staff will visit each Intensive Management Unit once per week. Request for religious material will be reviewed by the Assistant Superintendent of Security or his/her designee prior to issuing to the inmate.

(h) Medical/Dental/Mental Health Services:

(A) Health care and mental health care services will be provided to inmates in IMU in accordance with the Department of Corrections rule on Health Services (Inmate), OAR 291-124.

(B) A member of the Health Services staff shall minimally visit the Intensive Management inmates three times weekly. The staff member will provide each inmate an opportunity to talk with him/her and refer requests for medical, dental, mental health services to the appropriate staff member.

(C) A physician will visit Intensive Management Units as the need arises. Dental services will be provided on a schedule determined between the unit manager or his/her designee and the Health Services Manager.

(D) Mental Health Services: Behavioral Health Services staff shall perform and supervise mental health services as needed. Services may include crisis intervention, behavioral contracts, anger management, brokering out other mental health services, as well as transitional services. While it is recognized some inmates refuse services and are otherwise unamenable to treatment, the accessibility to treatment services remains available during times of assessment, by inmate request, or could be fostered by an inmate's uncontrollable behavior(s).

(2) Services: Depending on unit adjustment and inmate programming level, inmates have opportunities for increased programs and services. These programs and services may include the following:

(a) Visits: Visits will be permitted based on the inmate's program level and conducted in accordance with the department's rule on Visiting (Inmate), OAR 291-127. Visits will be conducted in a basic visiting area for IMU status inmates. Visits must be scheduled at least three days in advance of the visit.

(b) Exercise: Inmates in the Intensive Management Unit shall have the opportunity to exercise out of their cells as outlined by the IMU program level, except for those inmates who receive a conduct order or disciplinary sanction as provided in the department's rule on Prohibited Inmate Conduct (OAR 291-105). Inmates eligible to exercise will receive 40 minutes of exercise per day, five days per week. The 40-minute exercise period will begin when the inmate exits his/her cell.

(c) Library: Paperback books are available for inmate use on an exchange basis. The books may be exchanged on a regularly scheduled basis.

(d) Canteen: As outlined in the Intensive Management program level, inmates may be eligible to purchase canteen items. Canteen items will be issued every other week to eligible inmates. Authorized canteen items are as follows:

- (A) Level One: Envelopes, 15 total
- (B) Level Two:
  - (i) Envelopes, 30 total;
  - (ii) Notebook paper;
  - (iii) Wash cloth;
  - (iv) Shower thongs;
  - (v) Small container of hair conditioner;
  - (vi) Small tube body lotion;
  - (vii) Denture cleanser/container;
  - (viii) Hand soap;
  - (ix) Plastic soap dish;
  - (x) Small tube shampoo;
  - (xi) Toothpaste; and

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(xii) Eye care solution.

(C) Levels Three and Four: In addition to the above, inmates may purchase additional items as authorized by the functional unit manager or designee.

(e) Education: Education services may be made available to inmates assigned to IMU or to an IMU status cell to assist in developing each inmate's academic needs.

(f) Correctional Counselor Services: A correctional counselor will be assigned to each IMU.

(g) The services listed in sections (a) through (f) above will be provided unless security, staff availability, safety or sanitation considerations dictate otherwise as authorized by the functional unit manager or designee.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075

Hist.: CD 13-1991, f. & cert. ef. 6-7-91; CD 21-1994, f. 11-16-94, cert. ef. 12-1-94; DOC 20-2000, f. & cert. ef. 8-18-00; DOC 16-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14

## 291-055-0050

### Forfeiture/Deprivation of Service or Activity

(1) An Intensive Management Unit inmate may be required to forfeit or be temporarily deprived of any service or activity when the inmate is using them to destroy or damage property, obstruct security, or threatens physical violence to self or others. If an inmate is using any service or activity for self destruction, that service/activity may be temporarily removed upon order of the IMU manager or designee. Any item(s) withheld shall be returned at the earliest possible time when the basis for removal has ceased to exist. A written report documenting the action will be forwarded to the functional unit manager or designee.

(2) Services and activities may be forfeited or deprived as a result of a disciplinary sanction in accordance with the Department of Corrections rule on Prohibited Inmate Conduct and Processing Disciplinary Actions, OAR 291-105.

(3) Additional programs and services will depend on the inmate's adjustment and adherence to department rules and Intensive Management Unit regulations. Programs and services outlined in this rule denote eligibility only, they do not guarantee program and service delivery. Staff and facility resources may determine frequency and duration of approved inmate activity.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075

Hist.: CD 13-1991, f. & cert. ef. 6-7-91; CD 21-1994, f. 11-16-94, cert. ef. 12-1-94; DOC 20-2000, f. & cert. ef. 8-18-00; DOC 16-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14

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**Rule Caption:** Possession and Storage of Personal Firearms for Corrections Officers at Department of Corrections Facilities

**Adm. Order No.:** DOC 17-2014(Temp)

**Filed with Sec. of State:** 7-2-2014

**Certified to be Effective:** 7-2-14 thru 12-3-14

**Notice Publication Date:**

**Rules Adopted:** 291-016-0120

**Rules Amended:** 291-016-0020

**Subject:** HB 4035 from the 2014 legislative session directs the Oregon Department of Corrections to allow corrections officers employed by the department to possess a firearm in the officer's personal vehicle when the vehicle is parked in a department parking lot if the department has not provided secure storage of firearms owned by the officers and the officer is present at the department in an official capacity. This is being re-filed to correct a filing error.

**Rules Coordinator:** Janet R. Worley—(503) 945-0933

## 291-016-0020

### Definitions

(1) Concealed Handgun License (CHL): A current and valid Oregon Concealed Handgun License issued by the employee's county of residence in accordance with ORS 166.291 and 166.292

(2) Contractor: Any person under contractual arrangement to provide services to the Department of Corrections.

(3) Corrections Officer: As defined in ORS 181.610, a department staff member in the correctional officer classification series who is charged with, and primarily performs the duty of custody, control or supervision of inmates.

(4) Employee: Any person employed full time, part time or under temporary appointment by the department.

(5) Facility: The building and grounds area operated by a functional unit which physically houses inmates.

(6) Facility Access: The designated location in a facility which is the only authorized entrance (except as authorized by the functional unit manager or designee) and exit for persons desiring access into or out of the perimeter of the facility.

(7) Facility Visitor: Any person authorized access inside the secure perimeter of a facility who is not a department employee, contractor, volunteer, other agency liaison or who is not an inmate visitor at the facility.

(8) Functional Unit: Any organizational component within the Department of Corrections responsible for the delivery of program services or coordination of program operations. In a correctional facility, the functional unit manager is the superintendent.

(9) Functional Unit Facility: A term used to declare any Department of Corrections facility in which a functional unit person performs his/her duties or services.

(10) Functional Unit Manager: Any person within the Department of Corrections who reports to either the Director, an Assistant Director or an administrator and has responsibility for the delivery of program services or coordination of program operations.

(11) Functional Unit Person: Any employee, contractor, approved carded volunteer, or other agency liaison assigned to work or provide services at a functional unit facility.

(12) Identification Card (ID Card): A picture identification card authorized by the Department of Corrections and issued to a department employee, contractor, volunteer or other agency liaison.

(13) Inmate Visitor: A person approved by the functional unit manager or designee to visit an inmate who resides in a facility.

(14) Oregon Corrections Enterprises: A semi-independent state agency that is a non-Department of Corrections agency or division, which is under the authority of the Director of the Department of Corrections. For purposes of this rule only, Oregon Corrections Enterprises shall not be considered an external organization.

(15) Oregon Corrections Enterprises (OCE) Employee: Any person employed full-time, part-time, or under temporary appointment by the Oregon Corrections Enterprises. For the purposes of this rule only, employee shall also include any person under contractual arrangement to provide services to the agency; any person employed by private or public sector agencies who is serving under agency-sanctioned special assignment to provide services or support to agency programs.

(16) Other Agency Liaison: Employees from other state and local agencies that have ongoing business need serving inmates and employees of the department. These employees include, but are not limited to, county parole and probation officers and state police detectives.

(17) Personal Firearm: A handgun owned by an individual corrections officer employed by the Department of Corrections. "Handgun" includes any pistol or revolver using a fixed cartridge containing a propellant charge, primer and projectile, and designed to be aimed or fired otherwise than from the shoulder.

(18) Reception Center (Inmate): The designated location(s) in a facility which is designed for transport officials to deliver or pick up an inmate housed in a functional unit.

(19) Reception Center (Public): The designated location(s) in a facility designed to control access for persons to enter the general inmate population area(s).

(20) Secure Perimeter: A manufactured structure (usually a fence or wall) that encloses a portion of the grounds and buildings and is designed to control entry or exit within the enclosure. The manufactured structure may use electronic detection for intrusion, doors and/or gates for entry and exit, lighting for visibility, and other physical restrictions such as razor ribbon, no climb fencing, and buried concrete curbing.

(21) Volunteer: An approved person who donates time, knowledge, skills, and effort to enhance the mission, activities, and programs of the department. A carded volunteer has completed a volunteer application, volunteer training, facility orientation, and functional unit orientation, and has been approved by a functional unit manager or his/her designee.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075

Hist.: CD 26-1992, f. 12-11-92, cert. ef. 1-2-93; DOC 24-1999(Temp), f. 7 cert. ef. 12-22-99 thru 6-19-00; DOC 12-2000, f. & cert. ef. 6-19-00; DOC 10-2006, f. & cert. ef. 10-9-06; DOC 14-2014(Temp), f. 6-5-14, cert. ef. 6-6-14 thru 12-3-14; DOC 17-2014(Temp), f. & cert. ef. 7-2-14 thru 12-3-14

## 291-016-0120

### Corrections Officers' Possession and Storage of Personal Firearms at Department of Corrections Facilities

(1) In accordance with ORS 166.360 to 166.380 (2014 Or Laws, Ch 88), this rule, and the department policy on Corrections Officer Secure Storage of Personal Firearms and Ammunition (40.1.14), a corrections offi-

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cer employed by the department may possess and store a personal firearm in the officer's personal vehicle when the vehicle is parked in a department parking lot at a Department of Corrections facility only if the officer:

(a) Is present in the officer's official capacity at a public building occupied by the department;

(b) Has a valid concealed handgun license issued pursuant to ORS 166.291 and 166.292; and

(c) Has secured the personal firearm in a closed and locked trunk, glove compartment, center console or other container, and the key is not inserted into the lock, if the trunk, glove compartment, center console or other container locks with a key.

(2) Use of Department Storage Facilities Required Where Provided: If the department has provided a secure and locked location for eligible corrections officers to store their personal firearms at a Department of Corrections facility, the corrections officer must promptly store the officer's personal firearm in the storage location designated by the department, and not in the officer's personal vehicle.

(3) Ammunition: Corrections officers who bring personal firearms to a Department of Corrections facility in accordance with these rules may possess and store with their personal firearm only that amount of ammunition that the personal firearm is designed to hold. Additional rounds or magazines of ammunition beyond the design capacity of the officer's personal firearm are unauthorized.

(4) Under no circumstance may a corrections officer carry a personal firearm within the secure perimeter of the correctional facility, unless authorized by the correctional facility's confidential procedure in order to securely store the officer's personal firearm.

(5) Personal firearms shall not be carried or used during the performance of official duties.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075

Hist.: DOC 14-2014(Temp), f. 6-5-14, cert. ef. 6-6-14 thru 12-3-14; DOC 17-2014(Temp), f. & cert. ef. 7-2-14 thru 12-3-14

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**Rule Caption:** Video Interactive Calls and Phones Calls for Inmates in ODOC Facilities

**Adm. Order No.:** DOC 18-2014(Temp)

**Filed with Sec. of State:** 7-7-2014

**Certified to be Effective:** 7-8-14 thru 12-31-14

**Notice Publication Date:**

**Rules Adopted:** 291-130-0017, 291-130-0018

**Rules Amended:** 291-130-0005, 291-130-0006, 291-130-0011, 291-130-0016, 291-130-0020

**Subject:** The department has expanded its telephone system for inmates, to include video interactive phone (VIP) calls. These temporary rules are necessary to establish policy and procedures governing the use of VIP calls. Other changes are necessary to reflect organizational and operational changes that have occurred in the department.

**Rules Coordinator:** Janet R. Worley — (503) 945-0933

## 291-130-0005

### 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 179.040, 423.020, 423.030, and 423.075.

(2) Purpose: The purpose of this rule is to establish policy and procedures governing the use of the inmate telephone system.

(3) Policy: The department encourages productive relationships between inmates and their families and recognizes telephone services are a positive means to strengthen ties and increase the likelihood of success upon release.

(a) It is the policy of the Department of Corrections to allow inmates to make telephone calls in accordance with the procedures outlined in this rule.

(b) It is the policy of the Department of Corrections that video interactive phone calls are a part of the inmate telephone system, and such calls are governed by the same policy and procedures as telephone calls.

(c) Within the inherent limitations of resources and the need for facility security, safety, health and good order, it is the policy of the Department of Corrections to permit, promote, facilitate, and encourage approved use of telephone systems between inmates and their families, friends, and others 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

Hist.: CD 5-1988, f. & cert. ef. 3-21-88; CD 8-1993, f. 3-10-93, cert. ef. 4-1-93; DOC 18-2014(Temp), f. 7-7-14, cert. ef. 7-8-14 thru 12-31-14

## 291-130-0006

### Definitions

(1) Access to Inmate Telephone System: An inmate's use of a personal identification number (PIN) and validated voice recognition to connect to the inmate telephone system.

(2) Functional Unit Manager: Any person within the Department of Corrections who reports to either the Director, Deputy Director, an assistant director, or an administrator and has responsibility for the delivery of program services or coordination of program operations. In these rules, the "functional unit manager" is the superintendent of an institution or the Inspector General.

(3) Inmate Telephone System: The system authorized by the Department of Corrections to facilitate inmate telephone calls and video interactive phone (VIP) calls.

(4) Legal Telephone Calls: Telephone calls between an inmate and his/her attorney or the attorney's documented representative(s), legal aid bureaus or other organizations as deemed appropriate by the department.

(5) Officer in Charge: That person designated by the functional unit manager to supervise the facility and make operational decisions in accordance with policy, rule or procedure during periods when the functional unit manager or officer of the day are not readily available.

(6) Personal Identification Number (PIN): An assigned number used by an inmate to access the inmate telephone system.

(7) Prepaid Call: A telephone call placed by an inmate using funds paid in advance from a telephone account.

(8) Telephone Services: Telephone calls, VIP calls, and voice messages afforded to inmates through the inmate telephone system.

(9) Third Party VIP Call: Any VIP call wherein the original called party logs out of the established session and provides another party with a different IP address sufficient information to log into the established VIP call. This includes any communication between the inmate and a third party utilizing the IP address.

(10) Three-Way Call: Any call that uses an intermediary call to bridge communication to a third party. This includes any communication between the inmate or the original called party with a third party not in the same location.

(11) Video Interactive Phone (VIP) Call: A call that has video interactive capabilities in which the parties are able to see and hear one another.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075

Hist.: CD 8-1993, f. 3-10-93, cert. ef. 4-1-93; DOC 2-2006, f. 3-10-06, cert. ef. 3-13-06; DOC 10-2012(Temp), f. 8-31-12, cert. ef. 9-1-12 thru 2-28-13; DOC 2-2013, f. & cert. ef. 2-22-13; DOC 18-2014(Temp), f. 7-7-14, cert. ef. 7-8-14 thru 12-31-14

## 291-130-0011

### Operation of Inmate Telephones

(1) Inmates are required to provide their personal identification number (PIN) and validated voice recognition to gain access to the inmate telephone system.

(a) Inmates are responsible to maintain the security of their access information.

(b) An inmate may not use another inmate's access information.

(c) The department is not responsible for theft, loss or costs related to an inmate lending his/her access information or failing to provide for its safekeeping.

(d) An inmate's PIN will be terminated if it has been lost, stolen, or if in the sole judgment of the functional unit manager/designee, the PIN has been used by the inmate or another person to engage in activity that violated department rule, state or federal law, or in other activity that poses a threat or is detrimental to the security, safety, health, good order or discipline within a Department of Corrections facility, inmate rehabilitation or that facilitates criminal activity.

(e) If an inmate's PIN is terminated, the department will issue the inmate a new PIN. The department may assess the inmate a PIN replacement fee.

(2) Prepaid Calls: The department will establish a telephone account for each inmate.

(a) Inmates may transfer funds from their trust account to their telephone account. Availability of funds in the inmate's trust account will be verified before any transfer of funds to the telephone account.

(b) An inmate shall address any issues regarding funds in his/her telephone account directly to the inmate telephone service provider.

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(c) Prepaid calls will disconnect when funds in an inmate's telephone account have been depleted.

(d) Inmates may obtain their individual telephone account balance through the inmate telephone system.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075

Hist.: DOC 2-2006, f. 3-10-06, cert. ef. 3-13-06; DOC 10-2012(Temp), f. 8-31-12, cert. ef. 9-1-12 thru 2-28-13; DOC 2-2013, f. & cert. ef. 2-22-13; DOC 18-2014(Temp), f. 7-7-14, cert. ef. 7-8-14 thru 12-31-14

## 291-130-0016

### General Provisions for Inmate Telephones

(1) All calls must be placed as collect or prepaid. Only collect or prepaid calls can be made from telephones designated for inmate use.

(2) The functional unit manager or designee has the authority to restrict telephone calls by an inmate if the safety of the public would be involved or the security of the facility or safety and welfare of any person would be jeopardized.

(3) Inmates shall not participate in three way calls or any form of call forwarding. An inmate may be assessed a service fee from the inmate telephone service provider if it is verified he/she has participated in a three-way call or any form of call forwarding.

(4) Inmates shall not place charges to third party numbers, motels, hotels, places of business, credit cards or to telephone company calling card numbers.

(5) If the telephone call cannot be completed because no one answers or the line is busy, the inmate shall hang up and attempt another call at another time.

(6) Inmates shall not loiter in the surrounding area where telephones are located.

(7) Only one inmate at a time shall be permitted access to a telephone. The inmate who initiates a call is the only person authorized to converse with the contact party during that call.

(8) Inmates may be required to sign up on the telephone log (CD 755) to reserve a time to use a telephone in a housing unit or activity area when there are a large number of inmates who want access to a telephone but there are a limited number of telephones.

(9) A set of Oregon telephone directories for major cities shall be located in the facility library.

(10) Special Housing: Inmates in special housing may be allowed telephone services as established by the functional unit manager. Special housing includes administrative housing, disciplinary segregation, Intensive Management Unit, Death Row housing, mental health special housing, and facility infirmaries.

(a) Inmates in special housing may have restricted telephone services, and be allowed only emergency calls, legal calls as specified in OAR 291-130-0021, or other calls as authorized by the functional unit manager or designee.

(b) Inmates in mental health special housing may have limited access to telephones if the access interferes with the inmate's treatment.

(11) The department may prohibit an inmate from calling a particular person or phone number when requested by the person, or in the case of a minor child, by the child's parent or legal guardian.

(12) Telephone calls between inmates and staff or former staff are not allowed without express written authorization by the functional unit manager or designee.

(13) Other inmate telephone services or restrictions, not specifically addressed in this rule, may be implemented for safety and security reasons or as authorized by the functional unit manager.

(14) Inmates shall report all inmate phone repair issues as directed by the department.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075

Hist.: CD 5-1988, f. & cert. ef. 3-21-88; CD 8-1993, f. 3-10-93, cert. ef. 4-1-93, Renumbered from 291-130-0010(5); DOC 7-2002, f. & cert. ef. 6-12-02; Renumbered from 291-130-0040, DOC 2-2006, f. 3-10-06, cert. ef. 3-13-06; DOC 10-2012(Temp), f. 8-31-12, cert. ef. 9-1-12 thru 2-28-13; DOC 2-2013, f. & cert. ef. 2-22-13; DOC 18-2014(Temp), f. 7-7-14, cert. ef. 7-8-14 thru 12-31-14

## 291-130-0017

### Operation of VIP Calls

(1) Inmates are required to provide their personal identification number (PIN) and comply with a validation process to gain access to the inmate telephone system to make VIP calls.

(2) The same provisions that apply to telephone calls as specified in OAR 291-130-0011 apply to VIP calls (security of PIN and access).

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075

Hist.: DOC 18-2014(Temp), f. 7-7-14, cert. ef. 7-8-14 thru 12-31-14

## 291-130-0018

### General Provisions for VIP Calls

(1) Inmates are responsible to schedule VIP calls through the inmate telephone system via kiosks located throughout each institution.

(a) Accessibility to VIP calls will differ by institution given the uniqueness of each institution.

(b) Inmates will be allowed to make VIP calls during designated times based on a first-come, first-served basis to access their accounts with staff authorization.

(2) Inmates must place VIP calls as prepaid. The inmate telephone system does not allow collect VIP calls.

(3) If the inmate cannot complete the VIP call because the called party is not available or for other reasons, the inmate shall terminate the call and reschedule at another time.

(4) Inmates shall not loiter in the surrounding area where kiosks are located.

(5) Only one inmate at a time shall be permitted access to a VIP call. The inmate who initiates a VIP call is the only person authorized to converse with the contact party during that call. An inmate may be assessed a fee from the inmate telephone service provider if it is verified more than one inmate participated in a VIP call.

(6) Family VIP Calls: The functional unit manager or designee, at their sole discretion, may authorize more than one inmate to participate in a VIP call to encourage and promote responsible familial relationships.

(7) Appropriate Clothing/Dress:

(a) Inmates must be properly attired consistent with standards set forth in OAR 291-123-0015(5) and the inmate handbook.

(b) The caller or contacted party is encouraged to wear clothing that is conservative in nature; e.g., clothing that is not unduly suggestive or form fitting. The caller or contacted party shall not display male or female genitalia, the pubic area or anus, or expose the female breasts.

(8) VIP calls between inmates and staff or former staff are not allowed without express written authorization by the functional unit manager or designee.

(9) Special Housing: Inmates in special housing are not allowed access to VIP calls, unless authorization is given by the functional unit manager. Special housing includes administrative housing, disciplinary segregation, Intensive Management Unit, Death Row housing, mental health special housing, and facility infirmaries.

(10) The department may prohibit an inmate from participating in a VIP call with a particular person or phone number when requested by the person, or in the case of a minor child, by the child's parent or legal guardian.

(11) Inmates shall not participate in VIP calls with two or more parties using different IP addresses during the same VIP call. An inmate may be assessed a service fee from the inmate telephone service provider if it is verified he/she has participated in a VIP call with participants using more than one IP address.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075

Hist.: DOC 18-2014(Temp), f. 7-7-14, cert. ef. 7-8-14 thru 12-31-14

## 291-130-0020

### Monitoring, Termination and Blocking of Telephone and VIP Calls

(1) All calls are subject to monitoring and recording except for legal telephone calls.

(a) Directly above each group of monitored telephones, a sign shall be posted stating in English and Spanish, "Phone calls are subject to being monitored and recorded."

(b) Directly above each VIP kiosk, a sign shall be posted stating in English and Spanish, "VIP calls are monitored and recorded."

(2) An inmate's use of the inmate telephone system to engage in activity that is a violation of department rules, state, or federal law may result in disciplinary action and possible restriction of telephone services.

(3) The department may block access to phone numbers used to commit a crime or violate department rules, including any attempt to place a three-way call or use any form of call forwarding. The owner of a telephone number that has been blocked for participation in a three-way call or call forwarding may request an administrative review by writing to the Inspector General.

(4) An inmate's telephone services may be suspended by the functional unit manager/designee, in his/her sole discretion, when the functional unit manager/designee has reason to believe the inmate has used or may use inmate telephone services to:

(a) Engage in activity that violates department rule, state or federal law; or

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(b) Engage in other activity that poses a threat or is detrimental to the security, safety, health, good order or discipline within a Department of Corrections facility, inmate rehabilitation, facilitates criminal activity, or jeopardizes the safety and welfare of any person.

(c) The guidelines for suspension of VIP services for inmates and callers are found in Exhibit A.

(d) If the activity is deemed to be a severe violation by the inmate of department rules, state, or federal law, disciplinary action will result; and the inmate will be held accountable in accordance with the provisions of the inmate disciplinary rules (OAR 291-105).

(5) A "high alert" inmate under the management of the Security Threat Management Unit may have his/her telephone services or individual telephone calls suspended, restricted, or modified in accordance with OAR 291-069-0270, Management of High Alert Inmates.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075

Hist.: CD 5-1988, f. & cert. ef. 3-21-88; CD 8-1993, f. 3-10-93, cert. ef. 4-1-93, Renumbered from 291-130-0010(3); DOC 2-2006, f. 3-10-06, cert. ef. 3-13-06; DOC 10-2012(Temp), f. 8-31-12, cert. ef. 9-1-12 thru 2-28-13; DOC 2-2013, f. & cert. ef. 2-22-13; DOC 18-2014(Temp), f. 7-7-14, cert. ef. 7-8-14 thru 12-31-14

## Department of Energy Chapter 330

**Rule Caption:** Establishes home energy performance score system criteria, approval process, reporting requirements and assessor training.

**Adm. Order No.:** DOE 5-2014

**Filed with Sec. of State:** 6-30-2014

**Certified to be Effective:** 7-1-14

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**Rules Adopted:** 330-063-0015, 330-063-0025

**Rules Amended:** 330-063-0000, 330-063-0010, 330-063-0020, 330-063-0030, 330-063-0040

**Subject:** The permanent rules implement Section 12 of House Bill 2801, passed by the 2013 Oregon Legislative Assembly, which required the Oregon Department of Energy to adopt by rule a home energy performance score system for use in Oregon, training requirements for home energy assessors certified by the Construction Contractors Board, and requirements, if any, for home energy assessors to report home energy performance score data to the department.

In the permanent rules, the previously existing rule language for energy performance scores for residential buildings is replaced with new residential-related rule language pursuant to HB 2801. The amendments include new language describing: required elements of home energy performance score systems, a process for home energy performance score systems to be reviewed by a technical panel and approved for use in Oregon by the department's director, three home energy performance score systems that are grandfathered for use in Oregon until July 1, 2016, minimum training requirements for individuals seeking certification as home energy assessors by the Construction Contractors Board, and a requirement for home energy assessors to report home energy performance score data to the department unless the department is able to obtain the data through other means.

Additionally, the previously existing rule language related to energy performance scores for commercial buildings is rearranged and updated in the permanent rules in order to consolidate the commercial-related requirements into one rule section, clarify certain language, and use terminology consistent with the proposed new residential-related language.

**Rules Coordinator:** Elizabeth Ross—(503) 373-8534

### 330-063-0000

#### Purpose and Scope

These rules establish requirements of using a voluntary energy performance score system for the purpose of evaluating:

(1) Energy conservation and energy efficiency of new and existing residential buildings in Oregon; and

(2) Energy use in new and existing commercial buildings in Oregon.

Stat. Auth.: 2009 OL Ch. 750 (SB 79), ORS 469.703 & 469.040

Stats. Implemented: 2009 OL Ch. 750 & ORS 469.703

Hist.: DOE 6-2010, f. & cert. ef. 7-1-10; DOE 5-2014, f. 6-30-14, cert. ef. 7-1-14

### 330-063-0010

#### Definitions

For the purposes of these rules, unless otherwise specified, the following definitions shall apply:

(1) "Asset rating" means a representation of the building's energy efficiency or energy use generated by modeling under standardized weather and occupancy conditions.

(2) "Building" means any enclosed structure created for permanent use as a residence, a place of business, or any other activities whether commercial or noncommercial in character.

(3) "Building energy assessment" means a determination of a building's energy use and energy efficiency by analyzing the building's physical systems and assuming certain operational characteristics.

(4) "Commercial building" means a structure of which more than 50 percent of usable square footage is used or intended for use in the exchange, sale, or storage of goods, or the provision of services.

(5) "Department" means the State Department of Energy created under ORS 469.030.

(6) "Director" means the Director of the State Department of Energy appointed under ORS 469.040.

(7) "Energy performance score system" means a technical and administrative framework for producing and reporting metrics that describe the energy consumption, generation and efficiency of a building.

(8) "Home" means a residential building.

(9) "Home energy assessor" has the meaning given that term in ORS 701.527.

(10) "Home energy performance score" has the meaning given that term in ORS 701.527.

(11) "Home energy performance score system" means an energy performance score system designed and used for residential buildings and which meets the requirements of OAR 330-063-0015(1).

(12) "Operational rating" means a representation of a building's energy use generated by measuring actual energy consumption taking into consideration all physical systems and their operation.

(13) "Physical systems" means any energy-consuming equipment integrated in the building design, function or operation.

(14) "Residential building" has the same meaning as "residential structure" as defined in ORS 701.005.

Stat. Auth.: 2009 OL Ch. 750 (SB 79), ORS 469.703 & 469.040

Stats. Implemented: 2009 OL Ch. 750 & 469.703

Hist.: DOE 6-2010, f. & cert. ef. 7-1-10; DOE 5-2014, f. 6-30-14, cert. ef. 7-1-14

### 330-063-0015

#### Home Energy Performance Score System Requirements

(1) A home energy performance score system must:

(a) Generate a home energy performance score that meets the requirements of section (2);

(b) Generate a home energy performance report that meets the requirements of sections (3) and (4);

(c) Incorporate building energy assessment software, the output of which must be used to derive the information presented on the home energy performance report;

(d) Provide or specify required training in the use of the home energy performance score system for home energy assessors; and

(e) Establish minimum performance standards for quality assurance.

(2) A home energy performance score must be an asset rating that is based on physical inspection of the home or design documents used for the home's construction.

(3) A home energy performance report must include the following information, which must be presented on a single side of a single page if the report is formatted for printing:

(a) The home energy performance score described in section (2) and an explanation of the score;

(b) An estimate of the total annual energy used in the home in retail units of energy, by fuel type;

(c) An estimate of the total annual energy generated by on-site solar electric, wind electric, hydroelectric, and solar water heating systems in retail units of energy, by type of fuel displaced by the generation;

(d) An estimate of the total monthly or annual cost of energy purchased for use in the home in dollars, by fuel type, based on the current average annual retail energy price of the utility serving the home at the time of the report;

(e) The current average annual utility retail energy price in dollars, by fuel type, used to determine the costs described in subsection (d) of this section;

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(f) At least one comparison home energy performance score that provides context for the range of possible scores. Examples of comparison homes include, but are not limited to, a similar home with Oregon's average energy consumption, the same home built to Oregon energy code, and the same home with certain energy efficiency upgrades.

(g) The name of the entity that assigned the home energy performance score and that entity's Construction Contractors Board license number if such a license is required by law;

(h) The date the building energy assessment was performed; and

(i) The statement "This report meets Oregon's Home Energy Performance Score standard." Reports generated by home energy performance score systems that have not been approved for use in Oregon according to OAR 330-063-0020 may not include this statement.

(4) Additional information that may be presented in a home energy performance report includes, but is not limited to:

(a) A list of recommended energy efficiency upgrades for the building;

(b) A hypothetical home energy performance score representing the score the building would be expected to receive upon completion of the energy efficiency upgrades in subsection (4)(a);

(c) The estimated amount of carbon dioxide equivalent (CO<sub>2</sub>e) emissions, in metric tons, resulting from the energy used in the home based on the carbon intensity, as reported on the department website, of the electricity provided by the electric utility that serves the home, natural gas and other fuel types used in the home.

Stat. Auth.: ORS 469.703 & 469.040

Stats. Implemented: ORS 469.703

Hist.: DOE 5-2014, f. 6-30-14, cert. ef. 7-1-14

## 330-063-0020

### Review and Approval of a Home Energy Performance Score System

(1)(a) The director will appoint a stakeholder panel to recommend to the director whether to approve home energy performance score systems for use in Oregon.

(b) Members of the stakeholder panel may serve terms up to five years. Members may include but are not limited to:

(A) A chair from the Oregon Department of Energy;

(B) A representative from Energy Trust of Oregon;

(C) A representative from the U.S. Department of Energy;

(D) A representative from a provider of building energy assessment software;

(E) A representative from each home energy performance score system approved for use in Oregon;

(F) A representative from an investor-owned electric utility;

(G) A representative from a consumer-owned electric utility;

(H) A representative from a natural gas utility;

(I) A representative from the residential construction industry;

(J) A representative from the real estate industry;

(K) A representative from the appraisal industry; and

(L) A representative from an entity that provides training for building energy assessments.

(c) In its review of a home energy performance score system, the stakeholder panel must review all required elements of the home energy performance score system listed in OAR 330-063-0015.

(d) The stakeholder panel may recommend to the director criteria for approval of home energy performance score systems, criteria for approval of training and certification programs or work experience, and revisions to OAR 330-063-0015 that specify criteria for content and format of a standard energy metrics label to be included in all home energy performance reports.

(e) The stakeholder panel may develop a charter and operating procedures. The stakeholder panel must provide its recommendations to the director in writing and must include a description of any dissenting views of panel members. Recommendations should be based on consensus when possible.

(2) Except as provided in section (3), home energy performance score systems must meet the requirements of OAR 330-063-0015, be reviewed by the stakeholder panel and be approved by the director prior to being used to assign home energy performance scores to homes in Oregon.

(a) An entity seeking approval for use of a home energy performance score system in Oregon must submit to the department a written request for review and approval. The request must include:

(A) A copy of or an internet link to the building energy assessment software used by the home energy performance score system;

(B) A sample of the home energy performance report generated by the home energy performance score system;

(C) A copy of test results demonstrating the accuracy of the building energy assessment software used by the home energy performance score system; and

(D) Other information that may be necessary for the stakeholder panel to make a recommendation to the director.

(b) Within 120 days of the department's receipt of a complete request, the stakeholder panel must complete its review of the home energy performance score system and provide its written recommendation to the director. If the stakeholder panel is unable to make a recommendation to the director within 120 days, department staff will make a recommendation to the director.

(c) Within 60 days of the director's receipt of the stakeholder panel's recommendation, the director will decide whether the home energy performance score system is approved for use in Oregon and provide that decision, including reasons for denying approval if approval is denied, in writing to the applicant. In deciding whether to approve a home energy performance score system for use in Oregon, the director will consider:

(A) Whether the system meets the requirements for home energy performance score systems in OAR 330-063-0015;

(B) The recommendation of the stakeholder panel, as well as dissenting views raised by one or more panel members;

(C) The test results of the building energy assessment software used by the home energy performance score system;

(D) The degree and nature of use of the system in the marketplace; and

(E) Any other information the director determines is necessary to make a decision whether to approve.

(3)(a) The following home energy performance score systems are approved for use in Oregon until January 1, 2016, without undergoing the review and approval process described in section (2):

(A) Energy Trust of Oregon EPS® in effect May 1, 2014;

(B) U.S. Department of Energy Home Energy Score in effect May 1, 2014; and

(C) Residential Energy Services Network Home Energy Rating System in effect May 1, 2014.

(b) No later than January 1, 2016, home energy performance score systems listed in subsection (3)(a) must meet the requirements of OAR 330-063-0015, and the provider of a home energy performance system listed in subsection (3)(a) must seek approval for the system's continued use in Oregon by submitting to the department a written request for review and approval according to subsection (2)(a). After the department has received the complete request, the home energy performance system may continue to be used in Oregon until the director has provided a decision whether to approve in writing to the applicant. The request will be reviewed by the stakeholder panel and considered for approval by the director according to the process and timelines described in subsections (2)(b) and (c).

(4) The provider of a home energy score system that has been approved for use in Oregon must submit to the department a new written request for review and approval every time a substantive revision is made to the approved system. The request for review and approval must include supporting documentation describing the revision. The request will be reviewed by the stakeholder panel and considered for approval by the director according to the process and timelines described in subsections (2)(b) and (c). A home energy performance score system that has undergone a substantive revision may not be used to assign home energy performance scores to homes in Oregon until the director has provided written approval for the use of the revised system. Substantive revisions include significant changes to the building energy assessment methodology, significant changes to the derivation of the home energy performance score or the scale on which it is presented, and significant changes to the training and quality assurance requirements for home energy assessors.

(5) The department may, at any time, request from the provider of an energy performance score system documentation demonstrating that no substantive revisions have been made to the home energy performance score system since the system was last approved for use in Oregon. The provider must comply with the department's request within 60 days. If the provider cannot demonstrate that no substantive revisions have been made to the system since it was last approved, the provider must submit to the department a written request for review and approval that includes documentation describing the. The request will be reviewed by the stakeholder panel and considered for approval by the director according to the process and timelines described in subsections (2)(b) and (c). The system may not be used to assign home energy performance scores to homes in Oregon until the director has provided written approval.

Stat. Auth.: 2009 OL Ch. 750 (SB 79), ORS 469.703 & 469.040

Stats. Implemented: 2009 OL Ch. 750 & ORS 469.703

Hist.: DOE 6-2010, f. & cert. ef. 7-1-10; DOE 5-2014, f. 6-30-14, cert. ef. 7-1-14

# ADMINISTRATIVE RULES

## 330-063-0025

### Training Requirements for Home Energy Assessors

Individuals producing home energy performance scores must:

(1) Be certified as a home energy assessor by the Oregon Construction Contractors Board if required by ORS 701.529;

(2) Have completed training in the software program used to produce the score; and

(3) Have successfully completed one of the following training and certification programs:

(a) Training and certification as a Building Performance Institute Building Analyst or Home Energy Professional Energy Auditor;

(b) Training and certification from the Residential Energy Services Network as a Home Energy Rater;

(c) Training and certification from the Oregon Training Institute as a Residential Energy Analyst; or

(d) Other training and certification program or work experience approved by the department. Requests for such approval must be submitted to the department in writing. The department may request information about the training and certification program or work experience from the requestor and will provide an approval decision to the requestor within 120 days of receipt of all requested information.

Stat. Auth.: ORS 469.703 & 469.040

Stats. Implemented: ORS 469.703

Hist.: DOE 5-2014, f. 6-30-14, cert. ef. 7-1-14

## 330-063-0030

### Reporting Home Energy Performance Score Data

Home energy assessors must report to the department, at least annually, in a manner specified by the department, the following information about each home in Oregon to which they assigned a home energy performance score, unless the department is able to obtain the information from another source:

(1) The zip code and city from the home's site address, but not the street address;

(2) The characteristics of the home that were input into the building energy assessment software; and

(3) All information required by OAR 330-063-0015(3) to be in the home energy performance report.

Stat. Auth.: 2009 OL Ch. 750 (SB 79), ORS 469.703 & 469.040

Stats. Implemented: 2009 OL Ch. 750 & ORS 469.703

Hist.: DOE 6-2010, f. & cert. ef. 7-1-10; DOE 5-2014, f. 6-30-14, cert. ef. 7-1-14

## 330-063-0040

### Energy Performance Score System Standards for Commercial Buildings

(1) Persons producing energy performance scores must have completed training in the building energy assessment software and energy performance score system used to produce the score.

(2) Building energy assessment software used to produce the score must be approved by the U.S. Department of Energy.

(3) An energy performance score for an existing commercial building must be an operational rating based upon the actual energy usage of the building and shall utilize utility data.

(4) An energy performance score for a new commercial building must be an asset rating based on the projected energy consumption of the building and may include a physical inspection of the building.

(5) An energy performance score must include an explanation of the score and the assumptions used to derive the score, the date of the score, and the name of the person that produced the score.

(6) Commercial energy use must be displayed in annual Kbtu per square foot as determined by approved energy modeling methods, using standard occupancy profiles for the building type. The annual energy consumption of each fuel (electricity, natural gas, oil, propane, etc) must be displayed in retail units.

(7) Energy performance score reports may include:

(a) A benchmark score based on a similar building built to state building code standards, a similar building that represents Oregon or national average energy consumption, or any other comparable building; and

(b) The estimated amount of carbon dioxide equivalent (CO<sub>2</sub>e) emissions, in metric tons, associated with the building's energy consumption based on the carbon intensity, as reported on the department's website, of the electricity provided by the electric utility that serves the building, natural gas and other fuel types used in the building.

Stat. Auth.: 2009 OL Ch. 750

Stats. Implemented: 2009 OL Ch. 750

Hist.: DOE 6-2010, f. & cert. ef. 7-1-10; DOE 5-2014, f. 6-30-14, cert. ef. 7-1-14

## Department of Environmental Quality

### Chapter 340

**Rule Caption:** Amendments to Oregon Smoke Management Plan and the Oregon State Implementation Plan for Air Quality

**Adm. Order No.:** DEQ 7-2014

**Filed with Sec. of State:** 6-26-2014

**Certified to be Effective:** 6-26-14

**Notice Publication Date:** 2-1-2014

**Rules Amended:** 340-200-0040

**Subject:** Short summary

The Oregon Environmental Quality Commission adopted amendments to the Oregon Smoke Management Plan, operated by the Oregon Department of Forestry, under the authority provided to DEQ under ORS 477.013. DEQ will submit these amendments to EPA as a revision to DEQ's State Implementation Plan.

ODF and DEQ recently reviewed the Oregon Smoke Management Plan to evaluate the effectiveness of the smoke management program. As a result, ODF and DEQ proposed changes to the plan under their respective authorities:

- ODF proposed amendments to its smoke management rules under OAR 629-048 and Operational Guidance for the Oregon Smoke Management Program, directive 1-4-1-601, which together comprise the plan.

- To incorporate ODF's amendments into the federally-approved Oregon Clean Air Act State Implementation Plan, DEQ proposed amending OAR 340-200-0040.

ODF and DEQ review the Oregon Smoke Management Plan about every five years. For the most recent review, ODF convened the Smoke Management Review Committee that met eight times during 2012 and 2013. Committee recommendations are the basis for ODF's amendments to the Oregon Smoke Management Plan:

1. Adopt additional voluntary provisions to provide greater visibility protection when burning near Crater Lake National Park and the Kalmiopsis Wilderness, both Oregon Class I areas. These provisions will help meet the federal Regional Haze Rule implemented under DEQ's 2010 Oregon Regional Haze Plan.

2. Adopt additional voluntary provisions to encourage greater use of alternatives to burning and emission reduction techniques.

3. For Special Protection Zone requirements adopted in 1992 to provide extra smoke management protection during the winter months for communities that exceeded federal air quality health standards:

a. Eliminate the La Grande Special Protection Zone. DEQ determined there is no longer a need for the La Grande Special Protection Zone.

b. Reduce the of the Special Protection Zone boundary for the Medford area, based on local topography and meteorology, to reflect the Medford airshed. Inside the boundary, prescribed burning will continue to follow the daily green, yellow, and red woodstove restrictions. Outside the boundary, prescribed burning will be prioritized to reduce burning on "red" woodstove days by only allowing smaller burn units that are farther away from Medford.

Both communities receive year-round smoke management protection under the plan. The Special Protection Zones ensure that any wintertime prescribed burning within 10 to 20 miles complies with local residential woodstove curtailment programs. In both communities, air quality levels have improved significantly and the communities now meet air standards. Around La Grande there is very little wintertime prescribed burning. In the Medford area, there is considerably more burning in the winter, which justifies keeping the Special Protection Zone but changing to the boundary, given the air quality improvements and burning prioritization noted above.

4. Allow ODF, rather than DEQ, to regulate a very small amount of prescribed burning on forestlands currently outside forest protection districts. The ODF rule amendment will manage this burn-

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ing under an interagency agreement between ODF and DEQ subject to the same requirements for all prescribed burning under the plan.

5. Require smoke monitoring for prescribed burns over 2000 tons in following existing language in ODF guidance. This will allow the landowner the ability to cease lighting or burn a smaller amount if air quality conditions change.

6. Other miscellaneous revisions to ODF rules including clarification to Special Protection Zone language, and flexibility to the five-year time period for plan review to allow an earlier or later time, but not to exceed 10 years if ODF and DEQ mutually agree.

## Brief history

ODF conducts prescribed forest burning in Oregon to eliminate unwanted forest debris, restore forest health and reduce the potential for major wildfires. Each year ODF burns approximately 150,000 acres of Oregon forests through the practice of prescribed burning. Smoke from this burning can occasionally pose a risk to public health and result in air quality levels exceeding the federal air quality standard for fine particulate matter, also called PM<sub>2.5</sub>. Even brief exposures to smoke can cause health problems for persons with asthma, emphysema, congestive heart disease and other existing medical conditions. The elderly, pregnant women and young children are especially high-risk groups. Smoke from forest burning also affects visibility in national parks and wilderness areas, as well as general outdoor recreation activities.

State law ORS 477.013 directs ODF to develop a smoke management plan for prescribed forestry burning in Oregon and to promulgate rules to carry out this plan. Consistent with the law, ODF developed the Oregon Smoke Management Plan, which consists of rules under OAR 629-048 and the Operational Guidance for the Oregon Smoke Management Program in directive 1-4-1-601. ODF implements the plan through a smoke management program for prescribed burning on federal, state and private forestland.

Adopted as a regulatory program in 1972, the objective of the smoke management program is to maximize burning opportunities, reduce the risk of wildfire and minimize smoke impacts on the public. Most of the larger cities and heavily populated areas in Oregon are designated as Smoke Sensitive Receptor Areas by ODF, and have greater restrictions on prescribed burning to prevent smoke intrusions. ODF's smoke management office in Salem conducts daily weather forecasts to determine areas in the state suitable for forestry burning, then issues daily burning instructions for those areas, that include limits in tons, how far apart to space the burning and distance from Smoke Sensitive Receptor Areas. The forest district staff make the actual decision on which units to burn based on the burning instructions. Each burn unit has a burn plan and pays burn fees. After burning, the district reports back to State Forestry in Salem on the burning accomplished.

As directed under state law, ODF adopts all rules associated with the plan through its Board of Forestry. State law ORS 477.013 does provide DEQ with joint approval authority of the plan and cites the need to "meet the air quality objectives of the federal Clean Air Act." To ensure prescribed burning meets the federal Clean Air Act, DEQ previously adopted the plan into the Oregon Clean Air Act State Implementation Plan as provided in DEQ rule OAR 340-200-0040, and any changes to the Oregon Smoke Management Plan require DEQ approval as a State of Oregon Clean Air Act Implementation Plan revision.

ORS 477.552 states the need to "improve the management of prescribed burning as a forest management and protection practice" and to "minimize emissions from prescribed burning consistent with the air quality objectives of the federal Clean Air Act and the State of Oregon State Implementation Plan." In order to improve the management of prescribed burning, every five years DEQ and ODF conduct a review of the plan to evaluate the effectiveness of the smoke management program. The last plan review was in 2007. Improvements included increasing the number of Smoke Sensitive Receptor Areas in the state. There are currently 23 Smoke Sensitive Receptor Areas that include both individual communities and larger urban-

ized areas, such as the entire Willamette Valley and Columbia River Gorge National Scenic Area.

In addition to Smoke Sensitive Receptor Areas protection, there is also additional wintertime smoke management protection called Special Protection Zones. There is typically limited prescribed burning during the winter months. Winter is also when many communities experience high smoke levels typically from woodstoves. Currently, Special Protection Zone requirements apply to five communities: Klamath Falls, Lakeview, Oakridge, Medford and La Grande, which have a history of exceeding the federal health standard for particulate matter and rely heavily on wintertime residential woodstove curtailment programs to improve air quality. The Special Protection Zone requirements restrict prescribed burning within 10 to 20 miles on the "green", "yellow" and "red" woodstove curtailment days. A red day means there can be no woodstove burning and no prescribed burning within the Special Protection Zone.

As noted above, the plan amendments eliminate the La Grande Special Protection Zone and reduce the of the Medford Special Protection Zone. DEQ supports these changes.

## Regulated parties

ODF's rulemaking primarily affects private forest landowners, and state and federal land managers who conduct prescribed burning under the Oregon Smoke Management Plan. DEQ's amendment to OAR 340-200-0040 incorporates ODF changes into State of Oregon Clean Air Act Implementation Plan, and does not change the regulated parties.

**Rules Coordinator:** Maggie Vandehey—(503) 229-6878

## 340-200-0040

### State of Oregon Clean Air Act Implementation Plan

(1) This implementation plan, consisting of Volumes 2 and 3 of the State of Oregon Air Quality Control Program, contains control strategies, rules and standards prepared by DEQ and is adopted as the state implementation plan (SIP) of the State of Oregon pursuant to the federal Clean Air Act, 42 U.S.C.A 7401 to 7671q.

(2) Except as provided in section (3), the Commission will revise the SIP pursuant to the rulemaking procedures in division 11 of this chapter and any other requirements contained in the SIP and will direct DEQ to submit such revisions to the United States Environmental Protection Agency for approval. The Commission last adopted revisions to the State Implementation Plan on June 19, 2014.

(3) Notwithstanding any other requirement contained in the SIP, DEQ may:

(a) Submit to the Environmental Protection Agency any permit condition implementing a rule that is part of the federally-approved SIP as a source-specific SIP revision after DEQ has complied with the public hearings provisions of 40 CFR 51.102 (July 1, 2002); and

(b) Approve the standards submitted by a regional authority if the regional authority adopts verbatim any standard that the Commission has adopted, and submit the standards to EPA for approval as a SIP revision.

**NOTE:** Revisions to the State of Oregon Clean Air Act Implementation Plan become federally enforceable upon approval by the United States Environmental Protection Agency. If any provision of the federally approved Implementation Plan conflicts with any provision adopted by the Commission, DEQ shall enforce the more stringent provision.

Stat. Auth.: ORS 468.020 & 468A

Stats. Implemented: ORS 468A

Hist.: DEQ 35, f. 2-3-72, ef. 2-15-72; DEQ 54, f. 6-21-73, ef. 7-1-73; DEQ 19-1979, f. & ef. 6-25-79; DEQ 21-1979, f. & ef. 7-2-79; DEQ 22-1980, f. & ef. 9-26-80; DEQ 11-1981, f. & ef. 3-26-81; DEQ 14-1982, f. & ef. 7-21-82; DEQ 21-1982, f. & ef. 10-27-82; DEQ 1-1983, f. & ef. 1-21-83; DEQ 6-1983, f. & ef. 4-18-83; DEQ 18-1984, f. & ef. 10-16-84; DEQ 25-1984, f. & ef. 11-27-84; DEQ 3-1985, f. & ef. 2-1-85; DEQ 12-1985, f. & ef. 9-30-85; DEQ 5-1986, f. & ef. 2-21-86; DEQ 10-1986, f. & ef. 5-9-86; DEQ 20-1986, f. & ef. 11-7-86; DEQ 21-1986, f. & ef. 11-7-86; DEQ 4-1987, f. & ef. 3-2-87; DEQ 5-1987, f. & ef. 3-2-87; DEQ 8-1987, f. & ef. 4-23-87; DEQ 21-1987, f. & ef. 12-16-87; DEQ 31-1988, f. 12-20-88, cert. ef. 12-23-88; DEQ 2-1991, f. & cert. ef. 2-14-91; DEQ 19-1991, f. & cert. ef. 11-13-91; DEQ 20-1991, f. & cert. ef. 11-13-91; DEQ 21-1991, f. & cert. ef. 11-13-91; DEQ 22-1991, f. & cert. ef. 11-13-91; DEQ 23-1991, f. & cert. ef. 11-13-91; DEQ 24-1991, f. & cert. ef. 11-13-91; DEQ 25-1991, f. & cert. ef. 11-13-91; DEQ 1-1992, f. & cert. ef. 2-4-92; DEQ 3-1992, f. & cert. ef. 2-4-92; DEQ 7-1992, f. & cert. ef. 3-30-92; DEQ 19-1992, f. & cert. ef. 8-11-92; DEQ 20-1992, f. & cert. ef. 8-11-92; DEQ 25-1992, f. 10-30-92, cert. ef. 11-1-92; DEQ 26-1992, f. & cert. ef. 11-2-92; DEQ 27-1992, f. & cert. ef. 11-12-92; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 8-1993, f. & cert. ef. 5-11-93; DEQ 12-1993, f. & cert. ef. 9-24-93; DEQ 15-1993, f. & cert. ef. 11-4-93; DEQ 16-1993, f. & cert. ef. 11-4-93; DEQ 17-1993, f. & cert. ef. 11-4-93; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 1-1994, f. & cert. ef. 1-3-94; DEQ 5-1994, f. & cert. ef. 3-21-94; DEQ 14-1994, f. & cert. ef. 5-31-94; DEQ 15-1994, f. 6-8-94, cert. ef. 7-1-94; DEQ 25-1994, f. & cert. ef. 11-2-94; DEQ 9-1995, f. & cert. ef. 5-1-95; DEQ 10-1995, f. & cert. ef. 5-1-95; DEQ 14-1995, f. & cert. ef. 5-25-95; DEQ 17-1995, f. & cert. ef. 7-12-95; DEQ 19-1995, f. & cert. ef. 9-1-95; DEQ 20-1995 (Temp), f. & cert. ef. 9-14-

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95; DEQ 8-1996(Temp), f. & cert. ef. 6-3-96; DEQ 15-1996, f. & cert. ef. 8-14-96; DEQ 19-1996, f. & cert. ef. 9-24-96; DEQ 22-1996, f. & cert. ef. 10-22-96; DEQ 23-1996, f. & cert. ef. 11-4-96; DEQ 24-1996, f. & cert. ef. 11-26-96; DEQ 10-1998, f. & cert. ef. 6-22-98; DEQ 15-1998, f. & cert. ef. 9-23-98; DEQ 16-1998, f. & cert. ef. 9-23-98; DEQ 17-1998, f. & cert. ef. 9-23-98; DEQ 20-1998, f. & cert. ef. 10-12-98; DEQ 21-1998, f. & cert. ef. 10-12-98; DEQ 1-1999, f. & cert. ef. 1-25-99; DEQ 5-1999, f. & cert. ef. 3-25-99; DEQ 6-1999, f. & cert. ef. 5-21-99; DEQ 10-1999, f. & cert. ef. 7-1-99; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-020-0047; DEQ 15-1999, f. & cert. ef. 10-22-99; DEQ 2-2000, f. & cert. ef. 6-1-01; DEQ 6-2000, f. & cert. ef. 5-22-00; DEQ 8-2000, f. & cert. ef. 6-6-00; DEQ 13-2000, f. & cert. ef. 7-28-00; DEQ 16-2000, f. & cert. ef. 10-25-00; DEQ 17-2000, f. & cert. ef. 10-25-00; DEQ 20-2000 f. & cert. ef. 12-15-00; DEQ 21-2000, f. & cert. ef. 12-15-00; DEQ 2-2001, f. & cert. ef. 2-5-01; DEQ 4-2001, f. & cert. ef. 3-27-01; DEQ 6-2001, f. & cert. ef. 7-1-01; DEQ 15-2001, f. & cert. ef. 12-26-01; DEQ 16-2001, f. & cert. ef. 12-26-01; DEQ 17-2001, f. & cert. ef. 12-28-01; DEQ 4-2002, f. & cert. ef. 3-14-02; DEQ 5-2002, f. & cert. ef. 5-3-02; DEQ 11-2002, f. & cert. ef. 10-8-02; DEQ 5-2003, f. & cert. ef. 2-6-03; DEQ 14-2003, f. & cert. ef. 10-24-03; DEQ 19-2003, f. & cert. ef. 12-12-03; DEQ 1-2004, f. & cert. ef. 4-14-04; DEQ 10-2004, f. & cert. ef. 12-15-04; DEQ 1-2005, f. & cert. ef. 1-4-05; DEQ 2-2005, f. & cert. ef. 2-10-05; DEQ 4-2005, f. & cert. ef. 5-13-05, cert. ef. 6-1-05; DEQ 7-2005, f. & cert. ef. 7-12-05; DEQ 9-2005, f. & cert. ef. 9-9-05; DEQ 2-2006, f. & cert. ef. 3-14-06; DEQ 4-2006, f. & cert. ef. 3-29-06, cert. ef. 3-31-06; DEQ 3-2007, f. & cert. ef. 4-12-07; DEQ 4-2007, f. & cert. ef. 6-28-07; DEQ 8-2007, f. & cert. ef. 11-8-07; DEQ 5-2008, f. & cert. ef. 3-20-08; DEQ 11-2008, f. & cert. ef. 8-29-08; DEQ 12-2008, f. & cert. ef. 9-17-08; DEQ 14-2008, f. & cert. ef. 11-10-08; DEQ 15-2008, f. & cert. ef. 12-31-08; DEQ 3-2009, f. & cert. ef. 6-30-09; DEQ 8-2009, f. & cert. ef. 12-16-09; DEQ 2-2010, f. & cert. ef. 3-5-10; DEQ 5-2010, f. & cert. ef. 5-21-10; DEQ 14-2010, f. & cert. ef. 12-10-10; DEQ 1-2011, f. & cert. ef. 2-24-11; DEQ 2-2011, f. & cert. ef. 3-15-11; DEQ 5-2011, f. & cert. ef. 4-29-11, cert. ef. 5-11-11; DEQ 18-2011, f. & cert. ef. 12-21-11; DEQ 1-2012, f. & cert. ef. 5-17-12; DEQ 7-2012, f. & cert. ef. 12-10-12; DEQ 10-2012, f. & cert. ef. 12-11-12; DEQ 4-2013, f. & cert. ef. 3-27-13; DEQ 11-2013, f. & cert. ef. 11-7-13; DEQ 12-2013, f. & cert. ef. 12-19-13; DEQ 1-2014, f. & cert. ef. 1-6-14; DEQ 4-2014, f. & cert. ef. 3-31-14; DEQ 5-2014, f. & cert. ef. 3-31-14; DEQ 6-2014, f. & cert. ef. 3-31-14; DEQ 7-2014, f. & cert. ef. 6-26-14

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**Rule Caption:** Update Phase One of the Clean Fuels Program

**Adm. Order No.:** DEQ 8-2014

**Filed with Sec. of State:** 6-26-2014

**Certified to be Effective:** 6-26-14

**Notice Publication Date:** 4-1-2014

**Rules Amended:** 340-253-0040, 340-253-0060, 340-253-0100, 340-253-0250, 340-253-0310, 340-253-0320, 340-253-0340, 340-253-0400, 340-253-0500, 340-253-0600, 340-253-0630, 340-253-0650, 340-253-3010, 340-253-3020

**Rules Repealed:** 340-253-3000

**Subject:** Short summary

The Oregon Environmental Quality Commission adopted rules revisions to adjust phase one of the Oregon Clean Fuels Program, which the commission adopted Dec. 7, 2012.

The revisions:

- Provide clarity to potential regulated and opt-in parties as they interpret whether and how the program applies to them

- Reduce requirements for certain fuel importers

- Add fuels available in Oregon to make reporting more accurate

The Clean Fuels Program requires all importers and Oregon producers of transportation fuels to register, keep records and submit reports to DEQ. The adopted rules revisions eliminate unnecessary requirements, reduce administrative burdens on smaller businesses and still maintain program integrity.

Background

On Dec. 11, 2013, the commission adopted temporary rules that expire June 30, 2014. The December 2013 rulemaking temporarily eliminated unnecessary requirements and reduced administrative burdens on smaller businesses required to submit their first reports to DEQ by April 30, 2014. These rules revisions adopted by the commission June 19, 2014 are substantively identical to the temporary rules.

These rules do not implement the carbon reduction phase, phase two, of the program.

Regulated parties

These rules affect all Oregon fuel producers and importers subject to the Oregon Clean Fuels Program

**Rules Coordinator:** Maggie Vandehey—(503) 229-6878

**340-253-0040**

**Definitions**

The definitions in OAR 340-200-0020 and this rule apply to this division. If the same term is defined in this rule and 340-200-0020, the definition in this rule applies to this division.

(1) “Baseline carbon intensity value” is 90.38 gCO<sub>2</sub>e per MJ for gasoline and gasoline substitutes and 90.00 gCO<sub>2</sub>e per MJ for diesel fuel

and diesel substitutes. These values are based on the mix of regulated and opt-in fuels supplied for use as a transportation fuel in Oregon in 2010.

(2) “Biodiesel” has the same meaning as defined under OAR 603-027-0410.

(3) “Biogas” means natural gas that meets the purity requirements under OAR 860-023-0025 and is produced from the breakdown of organic material in the absence of oxygen. Biogas production processes include, but are not limited to, anaerobic digestion, anaerobic decomposition and thermo-chemical decomposition:

(a) Applied to biodegradable biomass materials, such as manure, sewage, municipal solid waste, and waste from energy crops; and

(b) Used to produce landfill gas and digester gas.

(4) “Biogas compressed natural gas” means compressed natural gas consisting solely of compressed biogas.

(5) “Biogas liquefied natural gas” means liquefied natural gas consisting solely of liquefied biogas.

(6) “Biomass” has the same meaning as defined under OAR 603-027-0410.

(7) “Biomass-Based diesel” or “Renewable diesel” has the same meaning as defined under OAR 603-027-0410.

(8) “Blendstock” means a component blended with one or more other components to produce a finished fuel used in a motor vehicle.

(9) “Carbon intensity” means the amount of lifecycle greenhouse gas emissions per unit of energy of fuel expressed in grams of carbon dioxide equivalent per megajoule (gCO<sub>2</sub>e per MJ).

(10) “Compressed natural gas” means either biogas or fossil natural gas that meets the standards listed under OAR 860-023-0025 compressed to a pressure greater than ambient pressure.

(11) “Diesel fuel” has the same meaning as defined under OAR 603-027-0410.

(12) “Diesel substitute” means any fuel, other than diesel fuel, that may be used in light-duty or heavy-duty vehicles, and off-road vehicles that typically use diesel as a fuel. Diesel substitutes include but are not limited to liquefied natural gas used in a heavy duty motor vehicle and biodiesel used in a heavy duty motor vehicle.

(13) “Electricity bundled services supplier” means any person or entity that provides charging infrastructure and provides access to vehicles charging under contract with a charging service recipient or charging equipment owner.

(14) “Electric utility” has the same meaning as defined in ORS 757.600.

(15) “Ethanol,” or “Denatured fuel ethanol” has the same meaning as defined under OAR 603-027-0410.

(16) “Feedstock” means the material a fuel is made from.

(17) “Finished fuel” means a transportation fuel used directly in a motor vehicle without additional chemical or physical processing.

(18) “Finished hydrogen fuel” means a finished fuel that consists of:

(a) Hydrogen; or

(b) A blend of hydrogen and another fuel.

(19) “Fossil compressed natural gas” means compressed natural gas derived solely from petroleum or fossil sources such as oil fields and coal beds.

(20) “Fossil liquefied natural gas” means liquefied natural gas derived solely from petroleum or fossil sources such as oil fields and coal beds.

(21) “Fuel type” or “Fuel pathway” means any unique fuel feedstock and production process combination.

(22) “Gasoline” has the same meaning as defined under OAR 603-027-0410.

(23) “Gasoline substitute” means any fuel, other than gasoline, that may be used in light-duty vehicles that typically use gasoline as a fuel. Gasoline substitutes include but are not limited to electricity used in a light-duty motor vehicle and natural gas used in a light-duty motor vehicle.

(24) “Heavy duty motor vehicle” has the same meaning as defined under OAR 340-256-0010.

(25) “Import” means to bring a blendstock or a finished fuel from outside Oregon into Oregon.

(26) “Importer” means the person who imports a blendstock or a finished fuel from outside Oregon into Oregon:

(a) With respect to any imported liquid fuel, it means the person who owns the fuel in the stationary storage tank into which the fuel was first transferred after it was imported into Oregon; or

(b) With respect to any biogas, it means the person who owns the imported biogas upon receipt at a pipeline in Oregon through which the biogas is delivered in Oregon.

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(27) "Light-duty motor vehicle" has the same meaning as defined under OAR 340-256-0010.

(28) "Lifecycle greenhouse gas emissions" means the:

(a) Aggregate quantity of greenhouse gas emissions including direct and significant indirect emissions, such as significant emissions from changes in land use associated with the fuels;

(b) Full fuel lifecycle including all stages of fuel production, from feedstock generation or extraction, production, distribution, and combustion of the finished fuel by the consumer; and

(c) Mass values for all greenhouse gases as adjusted to account for their relative global warming potential.

(29) "Liquefied natural gas" means biogas or fossil natural gas converted to liquid form.

(30) "Liquefied petroleum gas" or "propane" has the same meaning as defined under OAR 603-027-0395.

(31) "Motor vehicles" has the same meaning as defined under OAR 603-027-0410.

(32) "Natural gas" means a mixture of gaseous hydrocarbons and other compounds from either fossil or biogas sources, with at least 80 percent methane by volume, and typically sold or distributed by utilities such as any utility company regulated by the Oregon Public Utility Commission.

(33) "Opt-in party" means a person who is not a regulated party and who elects to register with DEQ under OAR 340-253-0100(4).

(34) "Oregon producer" means:

(a) With respect to any liquid fuel, the person who makes the liquid blendstock or finished fuel at the Oregon production facility; or

(b) With respect to any biogas produced in Oregon, the person who refines the biogas to pipeline quality.

(35) "Oregon production facility" means a facility located in Oregon that:

(a) Produces any liquid blendstock or finished fuel other than liquefied natural gas; or

(b) Converts, compresses, liquefies, refines, treats or otherwise processes natural gas into compressed natural gas or liquefied natural gas that is ready for use as a transportation fuel in a motor vehicle without further physical or chemical processing.

(36) "OR-GREET" means the Greenhouse gases, Regulated Emissions, and Energy in Transportation (GREET) Argonne National Laboratory model modified and maintained for Oregon. Copies of OR-GREET are available from DEQ upon request.

(37) "Physical pathway" means the way a fuel is transported from the fuel producer to Oregon, including any combination of truck routes, rail lines, pipelines, marine vessels and any other transportation method.

(38) "Private access fueling facility" means an Oregon fueling facility that restricts access by use of a card or key-activated fuel dispensing device to dispensing fuel to nonretail customers.

(39) "Product transfer document" means an invoice, bill of lading, purchase contract, or any other proof of fuel ownership transfer.

(40) "Public access fueling facility" means an Oregon fueling facility that is not a private access fueling facility.

(41) "Regulated party" means a person identified as a regulated party under OAR 340-253-0310 through 340-253-0340. Regulated parties must comply with the requirements under OAR 340-253-0100.

(42) "Shortfall(s)" means a state in which the carbon intensity of a fuel is higher than the baseline carbon intensity value for gasoline and gasoline substitutes or diesel fuel and diesel substitutes. Shortfalls are expressed in units of metric tons of carbon dioxide equivalent (CO<sub>2</sub>e) and are calculated under OAR 340-253-1020.

(43) "Small Oregon importer" means any person who imports 250,000 gallons or less of fuel in a given calendar year into Oregon.

(44) "Surplus(es)" means a state in which the carbon intensity of a fuel is lower than the baseline carbon intensity value for gasoline or diesel fuel and their substitutes. Surpluses are expressed in units of metric tons of carbon dioxide equivalent (CO<sub>2</sub>e) and are calculated under OAR 340-253-1020.

(45) "Transportation fuel" means any fuel used or intended for use in motor vehicles as defined under OAR 603-027-0410.

Stat. Auth.: ORS 468.020 Sec. 6, ch. 754, OL 2009, (2011 Edition)

Stats. Implemented: Sec. 6, ch. 754, OL 2009, (2011 Edition).

Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; DEQ 15-2013(Temp), f. 12-20-13, cert. ef. 1-1-14 thru 6-30-14; DEQ 8-2014, f. & cert. ef. 6-26-14

## 340-253-0060

### Acronyms

The following acronyms apply to this division:

(1) "ASTM" means ASTM International (formerly American Society for Testing and Materials).

(2) "BTU" means British thermal unit.

(3) "DEQ" means Oregon Department of Environmental Quality.

(4) "EQC" means Oregon Environmental Quality Commission.

(5) "FEIN" means federal employer identification number.

(6) "gCO<sub>2</sub>e" means grams of carbon dioxide equivalent.

(7) "gge" means gasoline gallon equivalents.

(8) "MJ" means megajoule.

Stat. Auth.: ORS 468.020 Sec. 6, ch. 754, OL 2009, (2011 Edition)

Stats. Implemented: Sec. 6, ch. 754, OL 2009, (2011 Edition).

Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; DEQ 15-2013(Temp), f. 12-20-13, cert. ef. 1-1-14 thru 6-30-14; DEQ 8-2014, f. & cert. ef. 6-26-14

## 340-253-0100

### Oregon Clean Fuels Program

(1) Applicability.

(a) All regulated parties under section (3) that import or produce in Oregon any regulated fuel, as defined under OAR 340-253-0200, are subject to this rule.

(b) Any person may become an opt-in party by registering with DEQ under section (4) of this rule. All opt-in parties under section (3) that import or produce in Oregon any opt-in fuel, as defined under OAR 340-253-0200, are subject to this rule.

(2) Requirements. Beginning January 1, 2013:

(a) Regulated and opt-in parties, except for small Oregon importers of finished fuels, must register under section (4) of this rule, keep records under section (5) of this rule, and submit reports under sections (6) and (7) of this rule; and

(b) Small Oregon importers of finished fuels must register under section (4) of this rule and are exempt from keeping records under section (5) of this rule and submitting reports under sections (6) and (7) of this rule.

(3) Regulated party or opt-in party. The following rules designate regulated and opt-in parties, by type of fuel:

(a) OAR 340-253-0310 for gasoline, diesel fuel, biodiesel, biomass-based diesel, ethanol, and any other liquid fuel except liquefied natural gas and liquefied petroleum gas;

(b) OAR 340-253-0320 for natural gas including compressed natural gas, liquefied natural gas, biogas and liquefied petroleum gas;

(c) OAR 340-253-0330 for electricity; and

(d) OAR 340-253-0340 for hydrogen fuel or a hydrogen blend.

(4) Registration.

(a) After January 1, 2013, but no later than June 30, 2013, each regulated party must submit a complete application under OAR 340-253-0500 to register with DEQ for each fuel type the party imports or produces in Oregon on or before July 1, 2013, and that it plans to continue to import or produce in Oregon after July 1, 2013.

(b) Beginning on July 1, 2013, each regulated party must submit a complete application under OAR 340-253-0500 to register with DEQ for each fuel type, on or before the date upon which it begins to import or produce in Oregon such fuel.

(c) To become an opt-in party a person must submit a complete application under OAR 340-253-0500 to register with DEQ.

(5) Records.

(a) Beginning on July 1, 2013, each regulated party must develop and retain all records required under OAR 340-253-0600.

(b) Beginning on the latter of either July 1, 2013, or the date that an opt-in party submits a complete application, as determined by DEQ, under subsection (4)(c) of this rule, each opt-in party must develop and retain all records required under OAR 340-253-0600.

(6) Quarterly report. Beginning on January 1, 2014, each regulated and opt-in party must submit quarterly reports under OAR 340-253-0630. Reports must be submitted to DEQ for:

(a) January through March of each year, by May 31;

(b) April through June of each year, by August 31;

(c) July through September of each year, by November 30; and

(d) October through December of each year, by February 28 of the following year.

(7) Annual report. Each regulated party and opt-in party must submit an annual report each year under OAR 340-253-0650. The report must be submitted to DEQ by April 30 of each year to report for the prior calendar year; except for 2013, when the reporting period is from July 1 through December 31.

Stat. Auth.: ORS 468.020 Sec. 6, ch. 754, OL 2009, (2011 Edition)

Stats. Implemented: Sec. 6, ch. 754, OL 2009, (2011 Edition).

Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; DEQ 15-2013(Temp), f. 12-20-13, cert. ef. 1-1-14 thru 6-30-14; DEQ 8-2014, f. & cert. ef. 6-26-14

# ADMINISTRATIVE RULES

## 340-253-0250

### Exempt Fuels and Fuel Uses

(1) Exempt fuels. The following fuels are exempt from the definition of regulated fuels under OAR 340-253-0200(2)(h):

(a) A fuel supplied in Oregon if all providers supply an aggregate volume of less than 360,000 gge per year in Oregon. The party must:

- (A) Demonstrate that the exemption applies; and
- (B) Obtain exemption approval from DEQ in writing.

(b) A fuel produced from a research, development or demonstration facility as defined under OAR 330-090-0110 if the annual production volume is either 10,000 gallons or less, or no more than 50,000 gallons and the fuel producer uses the entire volume for its own motor vehicles. The party must:

- (A) Demonstrate that the exemption applies; and
- (B) Obtain exemption approval from DEQ in writing.

(2) Exempt fuels based on fuel uses. Fuels are exempt from the definition of regulated fuels under OAR 340-253-0200(2)(h) if:

(a) The fuel is supplied for use in the following motor vehicles:

- (A) Aircraft;
- (B) Racing activity vehicles under ORS 801.404;
- (C) Military tactical vehicles and tactical support equipment;
- (D) Railroad locomotives;
- (E) Ocean-going vessels defined under OAR 856-010-0003, except for vessel under fishery or recreational endorsement under title 46 United States Code, chapter 121;

(F) Motor vehicles registered as farm vehicles under ORS 805.300;

(G) Farm tractors, as defined under ORS 801.265;

(H) Implements of husbandry, as defined under ORS 801.310; or

(I) Motor trucks, as defined under ORS 801.355, used primarily to transport logs; and

(b) The regulated or opt-in party documents that the fuel was supplied for use in a motor vehicle listed in subsection (a) of this rule, as required under OAR 340-253-0600. Documentation that the fuel was transferred through a dedicated source to one of the motor vehicles identified in subsection (a) of this rule is sufficient. If not transferred through a dedicated source, all documentation must be on an individual fuel transaction basis.

(3) Fuel possession. Any fuel user or seller may possess any fuel regardless of its carbon intensity value, including but not limited to owners of the motor vehicles listed under subsection (2)(a).

Stat. Auth.: ORS 468.020 Sec. 6, ch. 754, OL 2009, (2011 Edition)

Stats. Implemented: Sec. 6, ch. 754, OL 2009, (2011 Edition).

Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; DEQ 15-2013(Temp), f. 12-20-13, cert. ef. 1-1-14 thru 6-30-14; DEQ 8-2014, f. & cert. ef. 6-26-14

## 340-253-0310

### Regulated Parties for Gasoline, Diesel Fuel, Biodiesel, Biomass-based Diesel and Ethanol and Other Regulated Fuels Except for Liquefied Natural Gas

(1) Applicability. This rule applies to all liquid blendstocks and liquid finished fuels listed under OAR 340-253-0200(2) except liquefied natural gas.

(2) Regulated party. The regulated party is the Oregon producer or importer of the fuel.

Stat. Auth.: ORS 468.020 Sec. 6, ch. 754, OL 2009, (2011 Edition)

Stats. Implemented: Sec. 6, ch. 754, OL 2009, (2011 Edition).

Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; DEQ 15-2013(Temp), f. 12-20-13, cert. ef. 1-1-14 thru 6-30-14; DEQ 8-2014, f. & cert. ef. 6-26-14

## 340-253-0320

### Regulated Parties and Opt-in Parties for Compressed Natural Gas, Biogas, Liquefied Natural Gas and Liquefied Petroleum Gas

(1) Fossil compressed natural gas. For fossil compressed natural gas, the opt-in party is the owner of the fueling equipment at the facility where the fossil compressed natural gas is dispensed for use in motor vehicles.

(2) Biogas compressed natural gas. For biogas compressed natural gas that is dispensed directly into motor vehicles in Oregon without first being blended with fossil compressed natural gas, the opt-in party is the Oregon producer or importer of the biogas.

(3) Fossil liquefied natural gas. For fossil liquefied natural gas:

(a) For fuel that is a regulated fuel under OAR 340-253-0200(2)(c), the regulated party is the owner of the liquefied natural gas when it is transferred to the facility where the liquefied natural gas is dispensed for use into motor vehicles; or

(b) For fuel that is an opt-in fuel under OAR 340-253-0200(3)(e), the opt-in party is the owner of the liquefied natural gas when it is transferred to the facility where the liquefied natural gas is dispensed for use into motor vehicles.

(4) Biogas liquefied natural gas. For biogas liquefied natural gas that is dispensed directly into motor vehicles in Oregon without first being blended with fossil liquefied natural gas, the opt-in party is the Oregon producer or importer of the biogas liquefied natural gas.

(5) Biogas compressed natural gas added to fossil compressed natural gas. For blends of these fuels, the opt-in parties for each of the component fuel types of the blended fuel remains the same as provide in sections (1) through (4).

(6) Biogas liquefied natural gas added to fossil liquefied natural gas. For blends of these fuels, the regulated and opt-in parties for each of the component fuel types of the blended fuel remains the same as provide in sections (1) through (4).

(7) Liquefied petroleum gas. For liquefied petroleum gas, the opt-in party is the owner of the fueling equipment at the facility where the liquefied petroleum gas is dispensed for use into motor vehicles.

Stat. Auth.: ORS 468.020 Sec. 6, ch. 754, OL 2009, (2011 Edition)

Stats. Implemented: Sec. 6, ch. 754, OL 2009, (2011 Edition).

Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; DEQ 15-2013(Temp), f. 12-20-13, cert. ef. 1-1-14 thru 6-30-14; DEQ 8-2014, f. & cert. ef. 6-26-14

## 340-253-0340

### Opt-in Parties for Hydrogen Fuel or Hydrogen Blends

Opt-in party. The opt-in party for a volume of finished hydrogen fuel is the Oregon producer or importer of the finished hydrogen fuel.

Stat. Auth.: ORS 468.020, 468A.270 Sec. 6, ch. 754, OL 2009, (2011 Edition)

Stats. Implemented: ORS 468A.270 Sec. 6, ch. 754, OL 2009, (2011 Edition)

Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; DEQ 15-2013(Temp), f. 12-20-13, cert. ef. 1-1-14 thru 6-30-14; DEQ 8-2014, f. & cert. ef. 6-26-14

## 340-253-0400

### Fuel Carbon Intensity Values

(1) Statewide carbon intensity values.

(a) A regulated or opt-in party must use the statewide average carbon intensity value in Table 1 under OAR 340-253-3010 or Table 2 under 340-253-3020, as applicable, for the following fuels:

- (A) Clear gasoline;
- (B) Gasoline blended with 10% ethanol;
- (C) Clear diesel fuel;
- (D) Diesel fuel blended with 5% biodiesel or biomass-based diesel;
- (E) Compressed fossil natural gas derived from natural gas not imported to North America in liquefied form;
- (F) Liquefied petroleum gas; and
- (G) Electricity, unless an electricity provider meets the conditions under subsection (1)(b) and proposes a different carbon intensity value.

(b) The opt-in party for electricity may propose a carbon intensity value different from the statewide average carbon intensity value if the electricity provider:

- (A) Only provides electricity for transportation; and
- (B) Is exempt from the definition of public utility under ORS 757.005(1)(b)(G), and is not regulated by the Oregon Public Utility Commission.

(c) Every three years, DEQ must review the statewide average carbon intensity values in Table 1 under OAR 340-253-3010 or Table 2 under 340-253-3020 and must:

(A) Consider the crude oil and other energy sources, production processes and flaring rates and other considerations that might affect the lifecycle carbon intensity of fuel used in Oregon; and

(B) Propose the EQC revise and update statewide average carbon intensity values in Table 1 or 2 under OAR 340-253-3010 or -3020 if DEQ determines that values should be changed by more than 5.0 gCO<sub>2</sub>e per MJ or 10 percent.

(2) Carbon intensity values for established pathways. Except as provided in section (3), regulated and opt-in parties must use the carbon intensity values for ethanol, biodiesel, biomass-based diesel, liquefied natural gas, biogas compressed natural gas, biogas liquefied natural gas, hydrogen, liquefied petroleum gas and any fossil compressed natural gas produced from natural gas that arrives in North America in liquefied form that best matches each fuel's carbon intensity, as listed in Table 1 under OAR 340-253-3010 or Table 2 under 340-253-3020, as applicable.

(3) Individual carbon intensity values.

(a) Directed by DEQ. A regulated or opt-in party must obtain an individual carbon intensity value for a fuel, if DEQ:

(A) Determines the fuel's carbon intensity is not adequately represented by any of the carbon intensity values for established pathways in Table 1 under OAR 340-253-3010 or Table 2 under 340-253-3020; and

(B) Directs the regulated or opt-in party to obtain an individual carbon intensity value under OAR 340-253-0450.

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(b) Election of the party. A regulated or opt-in party may propose an individual carbon intensity value for a fuel if:

(A) The fuel's carbon intensity, when compared to the carbon intensity value for the most similar fuel type in Table 1 under OAR 340-253-3010 or Table 2 under 340-253-3020, as applicable, changes by at least 5.0 gCO<sub>2</sub>e per MJ or 10 percent;

(B) The party has the capacity and intent to provide more than one million gge per year of the fuel in Oregon unless all providers of that fuel type supply less than one million gge per year in total; and

(C) The party applies for and obtains DEQ approval under OAR 340-253-0450.

(c) New fuel or feedstock. A regulated or opt-in party must obtain approval for an individual carbon intensity value under OAR 340-253-0450 for any fuel not included in Table 1 under 340-253-3010 or Table 2 under 340-253-3020 and for any fuel made from a feedstock not represented in a carbon intensity value in Table 1 under 340-253-3010 or Table 2 under 340-253-3020. The party must submit a modification to the original registration under 340-253-0500(5) within 30 days,

(d) Process change notification. The regulated or opt-in party must notify DEQ and obtain approval for an individual carbon intensity value under OAR 340-253-0450 for any changes to the fuel production process, if the fuel's carbon intensity value changes by more than 5.0 gCO<sub>2</sub>e per MJ or 10 percent. The party must submit a modification to the original registration under 340-253-0500(5) within 30 days.

(4) OR-GREET. The regulated or opt-in party must calculate all carbon intensity values using the approved version of OR-GREET, or a DEQ-approved comparable model for any fuel that cannot be modeled with OR-GREET. Any variations from the approved version of OR-GREET must be documented as described under OAR 340-253-0450(1) and submitted to DEQ for approval.

(5) Calculation requirements. When a regulated or opt-in party calculates a carbon intensity value of:

(a) Fuels made from biomass feedstock, the party may assume that the combustion and growing components of the fuel's lifecycle greenhouse gas emissions have net zero lifecycle carbon dioxide emissions.

(b) Fuels made from petroleum feedstock, including waste petroleum feedstock, the party may not assume that the combustion of the fuel has net zero carbon dioxide emissions.

(c) Fuels made from waste feedstock, the party may assume that the lifecycle greenhouse gas emissions analysis of the carbon intensity value begins when the original product becomes waste.

Stat. Auth.: ORS 468.020 Sec. 6, ch. 754, OL 2009, (2011 Edition)

Stats. Implemented: Sec. 6, ch. 754, OL 2009, (2011 Edition).

Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; DEQ 15-2013(Temp), f. 12-20-13, cert. ef. 1-1-14 thru 6-30-14; DEQ 8-2014, f. & cert. ef. 6-26-14

## 340-253-0500

### Registration

(1) Registration information. To register, a regulated or opt-in party must submit the following to DEQ:

(a) Company information including physical and mailing addresses, phone and fax numbers, e-mail addresses, primary and legal contact names and any applicable DEQ or EPA ID numbers.

(b) The fuel type(s) that will be imported or produced in Oregon.

(c) The producer of the biofuel, including each producer's physical address and the EPA company and facility ID numbers, for each fuel type.

(d) The proposed carbon intensity value, for each fuel type. The proposed carbon intensity value must be:

(A) A statewide carbon intensity value for any fuel listed under OAR 340-253-0400(1);

(B) An individual carbon intensity value listed in Table 1 under OAR 340-253-3010 or Table 2 under OAR 340-253-3020; or

(C) An individual carbon intensity value under OAR 340-253-0450.

(e) The volume estimated to be imported or produced in Oregon in a calendar year, for each fuel type.

(f) Other information requested by DEQ related to registration.

(2) Completeness of submittal. DEQ must review the information submitted under section (1) to determine if the submission is complete.

(a) If DEQ determines the submission is incomplete, DEQ must notify the party of the information needed to complete the submission. The party must provide the requested information within 30 calendar days from the date on the request.

(b) If DEQ determines the submission is complete, DEQ must notify the party in writing of the completeness determination.

(c) If DEQ does not notify the party in writing of the completeness determination within 30 calendar days of receipt of the registration application, the application is automatically deemed complete.

(3) Determination of carbon intensity values. DEQ must review the proposed carbon intensity values to determine if they are accurate. DEQ must review proposed carbon intensity values as follows:

(a) For a proposed carbon intensity value listed in Table 1 under OAR 340-253-3010 or Table 2 under OAR 340-252-3020, DEQ must review whether the fuel type accurately matches the fuel and fuel production process of the proposed carbon intensity value listed.

(b) For a proposed individual carbon intensity value, DEQ must approve the carbon intensity value or notify the party which carbon intensity value to use under OAR 340-253-0450.

(4) Registration approval. DEQ must notify the party in writing of its registration approval. The notification must include confirmation of the carbon intensity value for each fuel type to be used in calculating surpluses and shortfalls under OAR 340-253-1020.

(5) Modifications to registration.

(a) The party must submit an amended registration to DEQ within 30 days of any change occurring to information described in section (1), including any change that would result in a different carbon intensity value.

(b) DEQ may require a party to submit an amended registration based on new information that DEQ obtains from any source.

(6) Opting out. To opt-out, an opt-in party must notify DEQ in writing. Regulated parties may not opt-out.

Stat. Auth.: ORS 468.020 Sec. 6, ch. 754, OL 2009, (2011 Edition)

Stats. Implemented: Sec. 6, ch. 754, OL 2009, (2011 Edition).

Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; DEQ 15-2013(Temp), f. 12-20-13, cert. ef. 1-1-14 thru 6-30-14; DEQ 8-2014, f. & cert. ef. 6-26-14

## 340-253-0600

### Records

(1) All regulated and opt-in parties, except for small Oregon importers of finished fuels. Each regulated and opt-in party, except for small Oregon importers of finished fuels, must retain the following records for at least five years:

(a) Copies of all data and reports submitted to DEQ;

(b) Records of each fuel transaction made including:

(A) Fuel name, choosing the most applicable name from a list developed and provided by DEQ,

(B) Fuel application, choosing the most applicable choice from a list developed and provided by DEQ;

(C) Fuel pathway code, choosing the most applicable code from a list developed and provided by DEQ;

(D) Transaction date;

(E) Transaction type, choosing the most applicable type from a list developed and provided by DEQ;

(F) Transaction quantity;

(i) In gallons for liquid fuels including gasoline, diesel fuel, ethanol, biomass-based diesel, liquefied natural gas and liquefied petroleum gas;

(ii) In standard cubic feet for compressed natural gas;

(iii) In kilowatt-hours for electricity; and

(iv) In kilograms for hydrogen fuel.

(G) Transaction identification number;

(H) Business partner, choosing the most applicable name from a list developed and provided by DEQ;

(I) Physical pathway code, choosing the most applicable code from a list developed and provided by DEQ;

(J) Product transfer documents;

(K) Exempt status documentation under OAR 340-253-0250, if fuel is excluded from surplus and shortfall calculations under OAR 340-253-1010; and

(L) For fuel that is exported outside Oregon, where the party is the exporter of record.

(c) Records used to calculate surpluses and shortfalls;

(d) Other records used to determine compliance with the Oregon Clean Fuels Program; and

(e) Any other records identified by DEQ and related to the volume, distribution or carbon content of fuel produced or imported by a party.

(2) Oregon producers and importers of one or more non-petroleum blendstocks. In addition to section (1), each Oregon producer and importer of one or more non-petroleum blendstocks must retain the following records for at least five years:

(a) DEQ-approved carbon intensity for each fuel type, choosing the most appropriate choice from a list developed and provided by DEQ;

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(b) Name of the biofuel producer, including each producer's physical address, EPA company ID and facility ID number, for each fuel type, and choosing the most appropriate choice from a list developed and provided by DEQ; and

(3) Review. All data, records and calculations used by a regulated or opt-in party to comply with the Oregon Clean Fuels Program are subject to verification by DEQ. The party must provide records retained under section (1) within 60 calendar days after the date DEQ requests a review of the records, unless otherwise specified.

Stat. Auth.: ORS 468.020 Sec. 6, ch. 754, OL 2009, (2011 Edition)  
Stats. Implemented: Sec. 6, ch. 754, OL 2009, (2011 Edition).  
Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; DEQ 15-2013(Temp), f. 12-20-13, cert. ef. 1-1-14 thru 6-30-14; DEQ 8-2014, f. & cert. ef. 6-26-14

## 340-253-0630

### Quarterly Reports

Quarterly reports must include the following information, in a format provided or approved by DEQ:

(1) For each fuel type imported or produced in Oregon:

- (a) Total volume; and
- (b) DEQ-approved carbon intensity.

(2) Surpluses and shortfalls as calculated under OAR 340-253-1020, including the;

(a) Amount of surpluses and shortfalls generated during the quarter; and

(b) Quarterly and year-to-date net balance calculations under OAR 340-253-1030 for gasoline and gasoline substitutes and diesel and diesel substitutes.

(3) The volumes of any exempt fuels or fuels transferred to exempt users under OAR 340-253-0250; and

(4) Volumes exported outside Oregon.

Stat. Auth.: ORS 468.020 Sec. 6, ch. 754, OL 2009, (2011 Edition)  
Stats. Implemented: Sec. 6, ch. 754, OL 2009, (2011 Edition).  
Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; DEQ 15-2013(Temp), f. 12-20-13, cert. ef. 1-1-14 thru 6-30-14; DEQ 8-2014, f. & cert. ef. 6-26-14

## 340-253-0650

### Annual Reports

Annual reports must include the following information, in a DEQ provided or approved format:

(1) Company name of the regulated or opt-in party;

(2) For each fuel type imported or produced in Oregon during the calendar year:

- (a) Total volume; and
- (b) DEQ-approved carbon intensity.

(3) Surpluses or shortfalls as calculated under OAR 340-253-1020, including the;

(a) Amount of surpluses and shortfalls carried over from the previous year; and

(b) Amount of surpluses and shortfalls generated during the year.

(4) Net balance calculations under OAR 340-253-1030 for gasoline and gasoline substitutes and diesel and diesel substitutes;

(5) The volumes of any exempt fuels or fuels transferred to exempt users under OAR 340-253-0250; and

(6) Volumes exported outside Oregon.

Stat. Auth.: ORS 468.020 Sec. 6, ch. 754, OL 2009, (2011 Edition)  
Stats. Implemented: Sec. 6, ch. 754, OL 2009, (2011 Edition).  
Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; DEQ 15-2013(Temp), f. 12-20-13, cert. ef. 1-1-14 thru 6-30-14; DEQ 8-2014, f. & cert. ef. 6-26-14

## 340-253-3010

### Table 1 — Oregon Carbon Intensity Lookup Table for Gasoline and Gasoline Substitutes

This table contains the fuel carbon intensity values referenced in 340-253-0400.

[ED. NOTE: Tables referenced are available from the agency.]  
Stat. Auth.: ORS 468.020 Sec. 6, ch. 754, OL 2009, (2011 Edition)  
Stats. Implemented: Sec. 6, ch. 754, OL 2009, (2011 Edition).  
Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; DEQ 15-2013(Temp), f. 12-20-13, cert. ef. 1-1-14 thru 6-30-14; DEQ 8-2014, f. & cert. ef. 6-26-14

## 340-253-3020

### Table 2 — Oregon Carbon Intensity Lookup Table for Diesel Fuel and Diesel Substitutes

This table contains the fuel carbon intensity value referenced in 340-253-0400.

[ED. NOTE: Tables referenced are available from the agency.]  
Stat. Auth.: ORS 468.020 Sec. 6, ch. 754, OL 2009, (2011 Edition)  
Stats. Implemented: Sec. 6, ch. 754, OL 2009, (2011 Edition).  
Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; DEQ 15-2013(Temp), f. 12-20-13, cert. ef. 1-1-14 thru 6-30-14; DEQ 8-2014, f. & cert. ef. 6-26-14

**Rule Caption:** Increase Air Contaminant Discharge Permit Fees

**Adm. Order No.:** DEQ 9-2014

**Filed with Sec. of State:** 6-26-2014

**Certified to be Effective:** 6-26-14

**Notice Publication Date:** 4-1-2014

**Rules Adopted:** 340-216-8010, 340-216-8020

**Rules Amended:** 340-210-0100, 340-216-0020, 340-216-0025, 340-216-0040, 340-216-0052, 340-216-0054, 340-216-0056, 340-216-0060, 340-216-0062, 340-216-0064, 340-216-0066, 340-216-0070, 340-216-0090

**Subject:** The Oregon Environmental Quality Commission adopted rules revisions to:

- Increase air contaminant discharge permit fees. The 2013 Oregon Legislature authorized a 20 percent fee increase to restore services for operating Oregon's air contaminant discharge permit program. The fee increase prevents DEQ from losing 3.67 full-time equivalent positions authorized in DEQ's 2013 legislatively approved budget.

- Establish a lower application fee for greenhouse gas permits. The lower application fee applies to facilities that require a New Source Review or Prevention of Significant Deterioration permit for greenhouse gases when obtaining an air contaminant discharge permit or modifying their existing permit.

- Adjust the calculation for greenhouse gas reporting fees. The rules adjust the percentage of the air contaminant discharge permit fee used to calculate greenhouse gas reporting fees from 15 percent to 12.5 percent. This technical correction prevents the 20-percent air contaminant discharge fee increase from also increasing the current greenhouse gas reporting fees.

- Amend the low fee eligibility criteria. The rules make it easier for permitted facilities and DEQ to determine low fee eligibility for simple air contaminant discharge permits. The amendment changes the period used to capture eligibility data from rolling 12 months to a calendar year.

#### Background

The air contaminant discharge permit program is part of Oregon's federally-approved State Implementation Plan required to meet national air quality standards.

Oregon's air contaminant discharge permit program:

- Administers federal health standards, air toxic requirements and other regulations.

- Reduces the number of unhealthy air days and health risks from air toxics.

- Issues, renews or modifies permits to prevent or reduce air pollution through permit requirements.

- Ensures that existing pollution sources comply with state and federal air emissions standards.

- Ensures that new sources of air pollution install controls such as filtration equipment, combustion controls and vapor controls needed to protect air quality.

- Provides other essential services such as State Implementation Plan development, emission inventories, technical assistance, inspections, enforcement, rule and policy development, data management and reporting to EPA.

The permit fees also help support a portion of air quality monitoring, planning, and agency central services such as accounting and human resources.

Ninety-two percent of the revenue that Oregon needs to provide the requisite air quality program services comes from permit fees. State General Fund and federal funds provide the balance.

In 2013, the Environmental Quality Commission temporarily amended air contaminant discharge permit rules to allow DEQ to issue the 2014 annual fee invoices on schedule. The temporary rules adopted in October 2013 included the legislatively-approved fee increase and the technical correction to the greenhouse gas reporting fee.

Regulated parties

The amendments affect:

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- Facilities that currently have an air contaminant discharge permit and any facility that applies for this type of permit in the future.
- Small facilities that do not have a permit, but are registered with the permit program and under OAR Chapter 340 Division 210 in lieu of holding a permit, such as dry cleaners and auto body shops.
- New facilities that are categorized as major sources of greenhouse gases and those that make major modifications to existing greenhouse gas existing facilities.

**Rules Coordinator:** Maggie Vandehey—(503) 229-6878

## 340-210-0100

### Registration in General

(1) Any air contaminant source not subject to Air Contaminant Discharge Permits, OAR 340 division 216, or Oregon Title V Operating Permits, OAR 340 division 218, must register with DEQ upon request pursuant to 340-210-0110 through 340-210-0120.

(2) The owner or operator of an air contaminant source listed in subsection (2)(a) of this rule that is certified through a Department approved environmental certification program and subject to an Area Source NESHAP may register the source with DEQ pursuant to OAR 340-210-0110 through 340-210-0120 in lieu of obtaining a permit according to OAR 340-216-0020, unless DEQ determines that the source has not complied with the requirements of the environmental certification program.

(a) The following air contaminant sources may be registered under this section:

(A) Motor vehicle surface coating operations.

(B) Dry cleaners using perchloroethylene.

(b) Approved environmental certification program. To be approved, the environmental certification program must, at a minimum, require certified air contaminant sources to comply with all applicable state and federal rules and regulations and require additional measures to increase environmental protection.

(c) Fees. In order to obtain and maintain registration, owners and operators of air contaminant sources registered pursuant to this section must pay the following annual fees by March 1 of each year:

(A) Motor vehicle surface coating operations — \$288.00.

(B) Dry cleaners using perchloroethylene — \$216.00.

(C) Late fees.

(i) 8–30 days late: 5% of annual fee.

(ii) 31–60 days late: 10% of annual fee.

(iii) 61 or more days late: 20% of annual fee.

(D) Failure to pay fees. Registration is automatically terminated upon failure to pay annual fees within 90 days of invoice by DEQ, unless prior arrangements for payment have been approved in writing by DEQ.

(d) Recordkeeping. In order to maintain registration, owners and operators of air contaminant sources registered pursuant to this section must maintain records required by the approved environmental performance program under subsection (2)(b) of this rule. The records must be kept on site and in a form suitable and readily available for expeditious inspection and review.

(3) The owner or operator of an air contaminant source that is subject to a federal NSPS or NESHAP in 40 CFR Part 60 or 40 CFR Part 63 and that is not located at a source that is required to obtain a permit under OAR chapter 340, division 216 (Air Contaminant Discharge Permits) or OAR chapter 340, division 218 (Oregon Title V Operating Permits), must register and maintain registration with DEQ pursuant to 340-210-0110 through 340-210-0120 if requested in writing by DEQ (or by EPA at DEQ's request).

(4) Revocation. DEQ may revoke a registration if a source fails to meet any requirement in OAR 340-210-0110.

**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.

Stat. Auth.: ORS 468.020, 468A.025, 468A.035, 468A.050, 468A.070 & 468A.310  
Stats. Implemented: ORS 468 & 468A

Hist.: DEQ 15, f. 6-12-70, ef. 9-1-70; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93, Renumbered from 340-020-0005; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-0500; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 8-2009, f. & cert. ef. 12-16-09; DEQ 7-2011(Temp), f. & cert. ef. 6-24-11 thru 12-19-11; Administrative correction, 2-6-12; DEQ 1-2012, f. & cert. ef. 5-17-12; DEQ 4-2013, f. & cert. ef. 3-27-13; DEQ 9-2013(Temp), f. & cert. ef. 10-24-13 thru 4-22-14; Administrative correction, 5-21-14; DEQ 9-2014, f. & cert. ef. 6-26-14

## 340-216-0020

### Applicability

This division applies to all sources referred to in Table 1 of OAR 340-216-8010. This division also applies to Oregon Title V Operating Permit program sources when an ACDP is required by 340-218-0020 or 340-224-

0010. Sources referred to in Table 1 of 340-216-8010 are subject to fees in Table 2 of 340-216-8020.

(1) No person may construct, install, establish, develop or operate any air contaminant source referred to in Table 1 of OAR 340-216-8010 without first obtaining an Air Contaminant Discharge Permit (ACDP) from DEQ or Regional Authority, unless otherwise deferred from the requirement to obtain an ACDP in subsection (1)(c) of this rule or DEQ has granted an exemption from the requirement to obtain an ACDP under subsection (1)(f) of this rule. No person may continue to operate an air contaminant source if the ACDP expires, or is terminated or revoked; except as provided in 340-216-0082.

(a) For portable sources, a single permit may be issued for operating at any area of the state if the permit includes the requirements from both DEQ and Regional Authorities.

(b) DEQ or Regional Authority where the portable source's corporate offices are located will be responsible for issuing the permit. If the corporate office of a portable source is located outside of the state, DEQ will be responsible for issuing the permit.

(c) An air contaminant source required to obtain an ACDP or ACDP Attachment pursuant to a NESHAP or NSPS adopted by the Commission by rule is not required to submit an application for an ACDP or ACDP Attachment until four months after the effective date of the Commission's adoption of the NESHAP or NSPS, and is not required to obtain an ACDP or ACDP Attachment until six months after the Commission's adoption of the NESHAP or NSPS. In addition, DEQ may defer the requirement to submit an application for, or to obtain an ACDP or ACDP Attachment, or both, for up to an additional twelve months.

(d) Deferrals of Oregon permitting requirements do not relieve an air contaminant source from the responsibility of complying with federal NESHAP or NSPS requirements.

(e) OAR 340-216-0060(1)(b)(A), 340-216-0062(2)(b)(A), 340-216-0064(4)(a), and 340-216-0066(3)(a), do not relieve a permittee from the responsibility of complying with federal NESHAP or NSPS requirements that apply to the source even if DEQ has not incorporated such requirements into the permit.

(f) DEQ may exempt a source from the requirement to obtain an ACDP if it determines that the source is subject to only procedural requirements, such as notification that the source is affected by an NSPS or NESHAP.

(2) No person may construct, install, establish, or develop any source that will be subject to the Oregon Title V Operating Permit program without first obtaining an ACDP from DEQ or Regional Authority.

(3) No person may modify any source that has been issued an ACDP without first complying with the requirements of OAR 340-210-0205 through 340-210-0250.

(4) No person may modify any source required to have an ACDP such that the source becomes subject to the Oregon Title V Operating Permit program without complying with the requirements of OAR 340-210-0205 through 340-210-0250.

(5) No person may increase emissions above the PSEL by more than the de minimis levels specified in OAR 340-200-0020 without first applying for and obtaining a modified ACDP.

(6) Subject to the requirements in this Division, the Lane Regional Air Protection Agency is designated by the Commission as the permitting agency to implement the Air Contaminant Discharge Permit program within its area of jurisdiction. The Regional Agency's program is subject to DEQ oversight. The requirements and procedures contained in this Division pertaining to the Air Contaminant Discharge Permit program shall be used by the Regional Agency to implement its permitting program until the Regional Agency adopts superseding rules that are at least as restrictive as state rules.

**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-211-0040.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A

Hist.: DEQ 47, f. 8-31-72, ef. 9-15-72; DEQ 63, f. 12-20-73, ef. 1-11-74; DEQ 107, f. & ef. 1-6-76; Renumbered from 340-020-0033; DEQ 125, f. & ef. 12-16-76; DEQ 20-1979, f. & ef. 6-29-79; DEQ 23-1980, f. & ef. 9-26-80; DEQ 13-1981, f. 5-6-81, ef. 7-1-81; DEQ 11-1983, f. & ef. 5-31-83; DEQ 3-1986, f. & ef. 2-12-86; DEQ 12-1987, f. & ef. 6-15-87; DEQ 27-1991, f. & cert. ef. 11-29-91; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93, Renumbered from 340-020-0155; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 22-1994, f. & cert. ef. 10-4-94; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 19-1996, f. & cert. ef. 9-24-96; DEQ 22-1996, f. & cert. ef. 10-22-96; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1720; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 4-2002, f. & cert. ef. 3-14-02; DEQ 7-2007, f. & cert. ef. 10-18-07; DEQ 8-2007, f. & cert. ef. 11-8-07; DEQ 15-2008, f. & cert. ef. 12-31-08; DEQ 8-2009, f. & cert. ef. 12-16-09; DEQ 9-2009(Temp), f. 12-24-09, cert. ef. 1-1-10 thru 6-30-10; Administrative correction 7-27-10; DEQ 10-2010(Temp), f. 8-31-10, cert. ef. 9-1-10 thru 2-28-11; DEQ 12-2010, f. & cert. ef. 10-27-10; DEQ 1-2011, f. & cert. ef. 2-24-11; DEQ 5-2011, f. 4-29-11, cert. ef. 5-1-11; DEQ

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11-2011, f. & cert. ef. 7-21-11; DEQ 13-2011, f. & cert. ef. 7-21-11; DEQ 14-2011, f. & cert. ef. 7-21-11; DEQ 4-2013, f. & cert. ef. 3-27-13; DEQ 9-2013(Temp), f. & cert. ef. 10-24-13 thru 4-22-14; Administrative correction, 5-21-14; DEQ 9-2014, f. & cert. ef. 6-26-14

## 340-216-0025

### Types of Permits

#### (1) Construction ACDP:

(a) A Construction ACDP may be used for approval of Type 3 changes specified in OAR 340-210-0220 at a source subject to the ACDP permit requirements in this division.

(b) A Construction ACDP is required for Type 3 changes specified in OAR 340-210-0225 at sources subject to the Oregon Title V Operating Permit requirements.

(2) General ACDP. A General ACDP is for a category of sources for which individual permits are unnecessary in order to protect the environment. An owner or operator of a source may be assigned to a General ACDP if the Department has issued a General ACDP for the source category:

(a) The source meets the qualifications specified in the General ACDP;

(b) The Department determines that the source has not had ongoing, reoccurring, or serious compliance problems; and

(c) The Department determines that a General ACDP would appropriately regulate the source.

(3) Short Term Activity ACDP. A Short Term Activity ACDP is a letter permit that authorizes the activity and includes any conditions placed upon the method or methods of operation of the activity. The Department may issue a Short Term Activity ACDP for unexpected or emergency activities, operations, or emissions.

(4) Basic ACDP. A Basic ACDP is a permit that authorizes the regulated source to operate in conformance with the rules contained in OAR 340 divisions 200 to 268.

(a) Owners and operators of sources and activities listed in Table 1, Part A of OAR 340-216-8010 must at a minimum obtain a Basic ACDP.

(b) Any owner or operator of a source required to obtain a Basic ACDP may obtain either a Simple or Standard ACDP.

(5) Simple ACDP. A Simple ACDP is a permit that contains:

(a) All relevant applicable requirements for source operation, including general ACDP conditions for incorporating generally applicable requirements;

(b) Generic PSELs for all pollutants emitted at more than the de minimis level according to OAR 340 division 222;

(c) Testing, monitoring, recordkeeping, and reporting requirements sufficient to determine compliance with the PSEL and other emission limits and standards, as necessary; and

(d) A permit duration not to exceed 5 years.

(6) Standard ACDP:

(a) A Standard ACDP is a permit that contains:

(A) All applicable requirements, including general ACDP conditions for incorporating generally applicable requirements;

(B) Source specific PSELs or Generic PSELs, whichever are applicable, as specified in OAR 340 division 222;

(C) Testing, monitoring, recordkeeping, and reporting requirements sufficient to determine compliance with the PSEL and other emission limits and standards, as necessary; and

(D) A permit duration not to exceed 5 years.

(b) All owners and operators of sources and activities listed in Table 1, Part C of OAR 340-216-8010 must obtain a Standard ACDP.

(c) Owners or operators of sources and activities listed in Table 1, Part B of OAR 340-216-8010 that do not qualify for a General ACDP or Simple ACDP must obtain a Standard ACDP.

(d) Any owner or operator of a source not required to obtain a Standard ACDP may obtain a Standard ACDP.

**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-211-0040.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468.020 & 468A.025

Hist.: DEQ 47, f. 8-31-72, ef. 9-15-72; DEQ 63, f. 12-20-73, ef. 1-11-74; DEQ 107, f. & ef. 1-6-76; Renumbered from 340-020-0033; DEQ 125, f. & ef. 12-16-76; DEQ 20-1979, f. & ef. 6-29-79; DEQ 23-1980, f. & ef. 9-26-80; DEQ 13-1981, f. 5-6-81, ef. 7-1-81; DEQ 11-1983, f. & ef. 5-31-83; DEQ 3-1986, f. & ef. 2-12-86; DEQ 12-1987, f. & ef. 6-15-87; DEQ 27-1991, f. & cert. ef. 11-29-91; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93, Renumbered from 340-020-0155; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 22-1994, f. & cert. ef. 10-4-94; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 19-1996, f. & cert. ef. 9-24-96; DEQ 22-1996, f. & cert. ef. 10-22-96; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1720; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 4-2002, f. & cert. ef. 3-14-02; DEQ 5-2011, f. 4-29-11, cert. ef. 5-1-11; DEQ 9-2014, f. & cert. ef. 6-26-14

## 340-216-0040

### Application Requirements

(1) New Permits. Except for Short Term Activity ACDPs, any person required to obtain a new ACDP must provide the following general information, as applicable, using forms provided by the Department in addition to any other information required for a specific permit type:

(a) Identifying information, including the name of the company, the mailing address, the facility address, and the nature of business (Standard Industrial Classification (SIC) code);

(b) The name and phone number of a local person responsible for compliance with the permit;

(c) The name of a person authorized to receive requests for data and information;

(d) A description of the production processes and related flow chart;

(e) A plot plan showing the location and height of air contaminant sources. The plot plan must also indicate the nearest residential or commercial property;

(f) The type and quantity of fuels used;

(g) An estimate of the amount and type of each air contaminant emitted by the source in terms of hourly, daily, or monthly and yearly rates, showing calculation procedures;

(h) Any information on pollution prevention measures and cross-media impacts the applicant wants the Department to consider in determining applicable control requirements and evaluating compliance methods;

(i) Estimated efficiency of air pollution control equipment under present or anticipated operating conditions;

(j) Where the operation or maintenance of air pollution control equipment and emission reduction processes can be adjusted or varied from the highest reasonable efficiency and effectiveness, information necessary for the Department to establish operational and maintenance requirements in OAR 340-226-0120(1) and (2);

(k) A Land Use Compatibility Statement signed by a local (city or county) planner either approving or disapproving construction or modification of the source, if required by the local planning agency; and

(l) Any other information requested by the Department.

(2) Renewal Permits. Except for Short Term Activity ACDPs, any person required to renew an existing permit must submit the information identified in section (1) using forms provided by the Department, unless there are no significant changes to the permit. If there are significant changes, the applicant must provide the information identified in section (1) only for those changes. Where there are no significant changes to the permit, the applicant may use a streamlined permit renewal application process by providing the following information:

(a) Identifying information, including the name of the company, the mailing address, the facility address, and the nature of business (Standard Industrial Classification (SIC) code) using a form provided by the Department; and

(b) A marked up copy of the previous permit indicating minor changes along with an explanation for each requested change.

(3) Permit Modifications. For Simple and Standard ACDP modifications, the applicant must provide the information in section (1) relevant to the requested changes to the permit and a list of any new requirements applicable to those changes.

(4) Any owner or operator who fails to submit any relevant facts or who has submitted incorrect information in a permit application must, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information.

(5) The department must receive the application at least 60 days before a permit or modified permit is needed.

(6) The application must be completed in full and signed by the applicant or the applicant's legally authorized representative.

(7) Two copies of the application are required, unless otherwise requested by the Department. At least one of the copies must be a paper copy, but the others may be in any other format, including electronic copies, upon approval by the Department.

(8) A copy of NSR permit applications and supplemental information must also be submitted directly to the EPA.

(9) The name of the applicant must be the legal name of the facility or the owner's agent or the lessee responsible for the operation and maintenance of the facility. The legal name must be registered with the Secretary of State Corporations Division.

(10) All applications must include the appropriate fees as specified in Table 2 in OAR 340-216-8020.

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(11) Applications that are obviously incomplete, unsigned, improperly signed, or lacking the required exhibits or fees will be rejected by the Department and returned to the applicant for completion.

(12) Within 15 days after receiving the application, the Department will preliminarily review the application to determine the adequacy of the information submitted:

(a) If the Department determines that additional information is needed, the Department will promptly ask the applicant for the needed information. The application will not be considered complete for processing until the requested information is received. The application will be considered withdrawn if the applicant fails to submit the requested information within 90 days of the request;

(b) If, in the opinion of the Department, additional measures are necessary to gather facts regarding the application, the Department will notify the applicant that such measures will be instituted along with the timetable and procedures to be followed. The application will not be considered complete for processing until the necessary additional fact-finding measures are completed. When the information in the application is deemed adequate for processing, the Department will so notify the applicant.

(13) If at any time while processing the application, the Department determines that additional information is needed, the Department will promptly ask the applicant for the needed information. The application will not be considered complete for processing until the requested information is received. The application will be considered withdrawn if the applicant fails to submit the requested information within 90 days of the request.

(14) If, upon review of an application, the Department determines that a permit is not required, the Department will so notify the applicant in writing. Such notification is a final action by the Department on the application.

**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468 & 468A

Hist.: DEQ 42, f. 4-5-72, ef. 4-15-72; DEQ 47, f. 8-31-72, ef. 9-15-72; DEQ 63, f. 12-20-73, ef. 1-11-74; DEQ 107, f. & ef. 1-6-76; Renumbered from 340-020-0033; DEQ 20-1979, f. & ef. 6-29-79; DEQ 13-1988, f. & cert. ef. 6-17-88; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93, Renumbered from 340-020-0175; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1770; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01, Renumbered from 340-014-0020 & 340-014-0030; DEQ 5-2011, f. 4-29-11, cert. ef. 5-1-11; DEQ 9-2014, f. & cert. ef. 6-26-14

## 340-216-0052

### Construction ACDP

(1) Purpose. A Construction ACDP is a permit for approval of Type 3 construction or modification changes as specified in OAR 340-210-0220. The Construction ACDP includes requirements for the construction or modification of stationary sources or air pollution control equipment and does not by itself provide authorization to operate the new construction or modification. A new or modified Standard ACDP or Oregon Title V Operating Permit is required before operation of the new construction or modification. A Construction ACDP may be used for the following situations:

(a) For complex construction or modification projects that require an extended period of time to construct, the Construction ACDP may provide construction approval faster than issuance of a Standard ACDP or modified Standard ACDP because the operating requirements would not need to be included in the permit.

(b) For Oregon Title V Operating Permit sources, the Construction ACDP may include the requirements of OAR 340-218-0050 and follow the external review procedures in 340-218-0210 and 340-218-0230 so that the requirements may later be incorporated into the Oregon Title V Operating Permit by an administrative amendment. If the applicant elects to incorporate the Construction ACDP by administrative amendment, all of the application submittal, permit content, and permit issuance requirements of OAR 340 division 218 must be met for the Construction ACDP

(2) Application requirements. Any person requesting a Construction ACDP must:

(a) Submit an application according to OAR 340-216-0040 and provide the information specified in 340-216-0040(1) as it relates to the proposed new construction or modification; and

(b) Provide a list of any applicable requirements related to the new construction or modification.

(3) Fees. Applicants for a Construction ACDP must pay the fees in Table 2 of OAR 340-216-8020.

(4) Permit content. A Construction ACDP must include at least the following:

(a) A requirement that construction must commence within 18 months after the permit is issued;

(b) A requirement to construct according to approved plans;

(c) A requirement to comply with all applicable requirements;

(d) Emission limits for affected stationary sources;

(e) Performance standards for affected stationary sources and air pollution control equipment;

(f) Performance test requirements;

(g) Monitoring requirements, if specialized equipment is required (e.g., continuous monitoring systems);

(h) Notification and reporting requirements (construction status reports, startup dates, source test plans, CEMS performance specification testing plans, etc.);

(i) General ACDP conditions for incorporating generally applicable requirements;

(j) A requirement to modify the operating permit before commencing operation of the new construction or modification;

(k) A permit expiration date of no more than 5 years; and

(l) Oregon Title V Permit requirements as specified in OAR 340-218-0050, if the applicant requests the external review procedures in OAR 340-218-0210 and 340-218-0230.

(5) Permit issuance procedures:

(a) A Construction ACDP requires public notice according to OAR 340 division 209 for Category III permit actions.

(b) For sources subject to the Oregon Title V Operating Permit program, the applicant may ask for the external review procedures in 340-218-0210 and 340-218-0230 in addition to the requirements of 340 division 209 to allow the Construction ACDP to be incorporated into the Oregon Title V Operating Permit later by an administrative amendment provided the requirements of (1)(b) are met.

(c) Issuance of a modified Construction ACDP requires one of the following, as applicable:

(A) Non-technical modifications and non-NSR Basic and Simple technical modifications require public notice according to OAR 340 division 209 for Category I permit actions.

(B) Non-NSR/PSD Moderate and Complex technical modifications require public notice according to OAR 340 division 209 for Category II permit actions.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A

Hist.: DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 5-2011, f. 4-29-11, cert. ef. 5-1-11; DEQ 9-2014, f. & cert. ef. 6-26-14

## 340-216-0054

### Short Term Activity ACDPs

(1) Application requirements. Any person requesting a Short Term Activity ACDP must apply in writing, fully describing the emergency and the proposed activities, operations, and emissions. The application must include the fees specified in section (2) of this rule.

(2) Fees. Applicants for a Short Term Activity ACDP must pay the fees in Table 2 of OAR 340-216-8020.

(3) Permit content.

(a) This permit includes conditions that ensure adequate protection of property and preservation of public health, welfare, and resources.

(b) A Short Term Activity ACDP does not include a PSEL for any air contaminants discharged as a result of the permitted activity.

(c) A Short Term Activity ACDP automatically terminates 60 days from the date of issuance and may not be renewed.

(d) A Short Term Activity ACDPs will be properly conditioned to ensure adequate protection of property and preservation of public health, welfare and resources.

(4) Permit issuance procedures. A Short Term Activity ACDP requires public notice according to OAR 340 division 209 for Category I permit actions.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A

Hist.: DEQ 42, f. 4-5-72, ef. 4-15-72; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 22-1996, f. & cert. ef. 10-22-96; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01, Renumbered from 340-014-0050; DEQ 5-2011, f. 4-29-11, cert. ef. 5-1-11; DEQ 9-2014, f. & cert. ef. 6-26-14

## 340-216-0056

### Basic ACDPs

(1) Application requirements. Any person requesting a Basic ACDP must submit an application according to OAR 340-216-0040 and provide the information specified in OAR 340-216-0040(1).

(2) Fees. Applicants for a new Basic ACDP must pay the fees in Table 2 of OAR 340-216-8020.

(3) Permit content:

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- (a) A Basic ACDP contains only the most significant and relevant rules applicable to the source;
  - (b) A Basic ACDP does not contain a PSEL;
  - (c) A Basic ACDP requires a simplified annual report be submitted to the Department; and
  - (d) A Basic ACDP may be issued for a period not to exceed ten years.
- (4) Permit issuance procedures. A Basic ACDP requires public notice according to OAR 340 division 209 for Category I permit actions.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A

Hist.: DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 8-2007, f. & cert. ef. 11-8-07; DEQ 5-2011, f. 4-29-11, cert. ef. 5-1-11; DEQ 9-2014, f. & cert. ef. 6-26-14

## 340-216-0060

### General Air Contaminant Discharge Permits

#### (1) Applicability.

(a) DEQ may issue a General ACDP under the following circumstances:

(A) There are several sources that involve the same or substantially similar types of operations;

(B) All requirements applicable to the covered operations can be contained in a General ACDP;

(C) The emission limitations, monitoring, recordkeeping, reporting and other enforceable conditions are the same for all operations covered by the General ACDP; and

(D) The pollutants emitted are of the same type for all covered operations.

#### (b) Permit content. Each General ACDP must include the following:

(A) All relevant requirements for the operations covered by the General ACDP, excluding any federal requirements not adopted by the EQC;

(B) Generic PSELS for all pollutants emitted at more than the de minimis level according to OAR 340, division 222;

(C) Testing, monitoring, recordkeeping, and reporting requirements necessary to ensure compliance with the PSEL and other applicable emissions limits and standards; and

(D) A permit expiration date not to exceed 10 years from the date of issuance.

(c) Permit issuance procedures: A new General ACDP requires public notice and opportunity for comment according to OAR 340 division 209 for Category III permit actions. A reissued General ACDP or a modification to a General ACDP requires public notice and opportunity for comment according to OAR 340 division 209 for Category II permit actions. All General ACDPs are on file and available for review at DEQ's headquarters.

#### (2) Source assignment:

(a) Application requirements. Any person requesting that a source be assigned to a General ACDP must submit a written application according to OAR 340-216-0040 that includes the information in 340-216-0040(1), specifies the General ACDP source category, and shows that the source qualifies for the General ACDP.

(b) Fees. Applicants must pay the fees in Table 2 of OAR 340-216-8020. The fee class for each General ACDP is as follows:

(A) Hard chrome platers — Fee Class Three;

(B) Decorative chrome platers — Fee Class Two;

(C) Halogenated solvent degreasers — batch cold, batch vapor, and in-line — Fee Class Two;

(D) Perchloroethylene dry cleaners — Fee Class Six;

(E) Asphalt plants — Fee Class Three;

(F) Rock crushers — Fee Class Two;

(G) Ready-mix concrete — Fee Class One;

(H) Sawmills, planing mills, millwork, plywood manufacturing and veneer drying — Fee Class Three;

(I) Boilers — Fee Class Two;

(J) Crematories — Fee Class One;

(K) Grain elevators — Fee Class One;

(L) Prepared feeds, flour, and cereal — Fee Class One;

(M) Seed cleaning — Fee Class One;

(N) Coffee roasters — Fee Class One;

(O) Bulk gasoline plants — Fee Class One;

(P) Electric power generators — Fee Class Two;

(Q) Clay ceramics — Fee Class One;

(R) Hospital sterilizers — Fee Class Four;

(S) Secondary nonferrous metals — Fee Class One;

(T) Gasoline dispensing facilities — stage I — Fee Class Five;

(U) Gasoline dispensing facilities — stage II — Fee Class Four;

(V) Wood preserving — Fee Class Four;

(W) Metal fabrication and finishing — with two or more of the following operations — Fee Class Two;

(i) Dry abrasive blasting performed in a vented enclosure or of objects greater than 8 feet (2.4 meters) in any one dimension that uses materials that contain MFHAP or has the potential to emit MFHAP;

(ii) Spray-applied painting operation using MFHAP containing paints;

(iii) Welding operation that uses materials that contain MFHAP or has the potential to emit MFHAP and uses 2,000 pounds or more per year of MFHAP containing welding wire and rod (calculated on a rolling 12-month basis);

(X) Metal fabrication and finishing — with only one of the operations listed in subparagraphs (2)(b)(Y)(i) through (iii) of this rule — Fee Class One;

(Y) Metal fabrication and finishing — with none of the operations listed in subparagraphs (2)(b)(Y)(i) through (iii) of this rule — Fee Class Four;

(Z) Plating and polishing — Fee Class One;

(AA) Surface coating operations — Fee Class One;

(BB) Paint stripping — Fee Class One;

(CC) Aluminum, copper, and nonferrous foundries — Fee Class Two;

(DD) Paints and allied products manufacturing — Fee Class Two;

(EE) Any General ACDP not listed above — Fee Class One.

#### (c) Source assignment procedures:

(A) Assignment of a source to a General ACDP is a Category I permit action and is subject to the Category I public notice requirements according to OAR 340, division 209.

(B) A person is not a permittee under the General ACDP until DEQ assigns the General ACDP to the person.

(C) Assignments to General ACDPs and attachment(s) terminate when the General ACDP or attachment expires or is modified, terminated or revoked.

(D) Once a source has been assigned to a General ACDP, if the assigned General ACDP does not cover all requirements applicable to the source, excluding any federal requirements not adopted by the EQC, the other applicable requirements must be covered by assignment to one or more General ACDP Attachments according to OAR 340-216-0062, otherwise the source must obtain a Simple or Standard ACDP.

(E) A source requesting to be assigned to a General ACDP Attachment, according to OAR 340-216-0062, for a source category in a higher annual fee class than the General ACDP the source is currently assigned to, must be reassigned to the General ACDP for the source category in the higher annual fee class.

(3) DEQ Initiated Modification. If DEQ determines that the conditions have changed such that a General ACDP for a category needs to be modified, DEQ may issue a new General ACDP for that category and assign all existing General ACDP permit holders to the new General ACDP.

(4) Rescission. In addition to OAR 340-216-0082 (Termination or Revocation of an ACDP), DEQ may rescind an individual source's assignment to a General ACDP if the source no longer meets the requirements of this rule or the conditions of the permit, including, but not limited to a source having an ongoing, reoccurring or serious compliance problem. Upon rescinding a source's assignment to a General ACDP DEQ will place the source on a Simple or Standard ACDP. DEQ may also revoke a General ACDP or attachment or both if conditions, standards or rules have changed so the permit or attachment no longer meets the requirements of this rule.

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation

Plan as adopted by the EQC under OAR 340-200-0040.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468.020 & 468A.025

Hist.: DEQ 14-1998, f. & cert. ef. 9-14-98; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1725; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 10-2001, f. & cert. ef. 8-30-01; DEQ 4-2002, f. & cert. ef. 3-14-02; DEQ 2-2006, f. & cert. ef. 3-14-06; DEQ 8-2007, f. & cert. ef. 11-8-07; DEQ 15-2008, f. & cert. ef. 12-31-08; DEQ 8-2009, f. & cert. ef. 12-16-09; DEQ 1-2011, f. & cert. ef. 2-24-11; DEQ 5-2011, f. 4-29-11, cert. ef. 5-1-11; DEQ 4-2013, f. & cert. ef. 3-27-13; DEQ 9-2014, f. & cert. ef. 6-26-14

## 340-216-0062

### General ACDP Attachments

(1) Purpose. This rule allows a source to be assigned to one General ACDP and one or more General ACDP Attachments, as long as the General ACDP and General ACDP Attachment(s) contain all requirements applicable to the source. This would allow a source to avoid having to obtain a more costly Simple or Standard ACDP if there are no General ACDPs that contain all requirements applicable to the source.

#### (2) Applicability.

# ADMINISTRATIVE RULES

(a) DEQ may issue a General ACDP Attachment under the following circumstances:

(A) There are several sources that involve the same or substantially similar types of operations;

(B) All requirements applicable to the covered operations can be contained in a General ACDP Attachment;

(C) The emission limitations, monitoring, recordkeeping, reporting and other enforceable conditions are the same for all operations covered by the General ACDP Attachment;

(D) The pollutants emitted are of the same type for all covered operations. If a General ACDP and a General ACDP Attachment(s) cannot address all activities at a source, the owner or operator of the source must apply for a Simple or Standard ACDP according to this Division.

(b) Attachment content. Each General ACDP Attachment must include the following:

(A) All relevant requirements for the operations covered by the General ACDP Attachment, excluding any federal requirements not adopted by the EQC;

(B) Testing, monitoring, recordkeeping, and reporting requirements necessary to ensure compliance with the applicable emissions limits and standards; and

(C) An attachment expiration date not to exceed 10 years from the date of issuance.

(c) Attachment issuance procedures: A General ACDP Attachment requires public notice and opportunity for comment according to OAR 340 division 209 for Category II permit actions. All General ACDP Attachments will be on file and available for review at DEQ's headquarters.

(3) Source assignment:

(a) Application requirements. Any person requesting to be assigned to a General ACDP Attachment must submit a written application for each requested General ACDP Attachment that specifies the requested General ACDP Attachment and shows that the source qualifies for the requested General ACDP Attachment.

(b) Fees. Permittees must pay an annual fee of \$144.00 for each assigned General ACDP Attachment.

(c) Assignment procedures:

(A) Assignment to a General ACDP Attachment is a Category I permit action and is subject to the Category I public notice requirements according to OAR 340, division 209.

(B) A person is not a permittee under the General ACDP Attachment until DEQ assigns the General ACDP Attachment to the person.

(C) Assignments to a General ACDP Attachments terminate when the General ACDP Attachment expires or is modified, terminated or revoked.

(D) A source may not be assigned to a General ACDP Attachment for a source category in a higher annual fee class than the General ACDP the source is currently assigned to. Instead a source must be reassigned to the General ACDP for the source category in the higher annual fee class according to OAR 340-216-0060(2)(c)(E) and may be assigned to one or more General ACDP Attachments associated with source categories in an equal or lower annual fee class.

(d) If all activities at a source cannot be addressed by a General ACDP and General ACDP Attachments, the owner or operator of the source must apply for a Simple or Standard ACDP according to this Division.

**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468.020 & 468A.025

Hist.: DEQ 8-2009, f. & cert. ef. 12-16-09; DEQ 4-2013, f. & cert. ef. 3-27-13; DEQ 9-2013(Temp), f. & cert. ef. 10-24-13 thru 4-22-14; Administrative correction, 5-21-14; DEQ 9-2014, f. & cert. ef. 6-26-14

## 340-216-0064

### Simple ACDP

(1) Applicability.

(a) Sources and activities listed in Table 1, Part B of OAR 340-216-8010 that do not qualify for a General ACDP and are not required to obtain a Standard ACDP must, at a minimum, obtain a Simple ACDP.

(b) Any source required to obtain a Simple ACDP may obtain a Standard ACDP.

(c) DEQ may determine that a source is ineligible for a Simple ACDP and must obtain a Standard ACDP based upon, but not limited to, the following considerations:

(A) The nature, extent, and toxicity of the source's emissions;

(B) The complexity of the source and the rules applicable to that source;

(C) The complexity of the emission controls and potential threat to human health and the environment if the emission controls fail;

(D) The location of the source; and

(E) The compliance history of the source.

(2) Application Requirements. Any person requesting a new, modified, or renewed Simple ACDP must submit an application according to OAR 340-216-0040.

(3) Fees. Applicants for a new or modified Simple ACDP must pay the fees in Table 2 of OAR 340-216-8020. Annual fees for Simple ACDPs will be assessed based on the following:

(a) Low Fee — A Source may qualify for the Low Fee if:

(A) the source is, or will be, permitted under only one of the following categories in Table 1, Part B (category 27. Electric Power Generation, may be included with any category listed below) of OAR 340-216-8010:

(i) Category 7. Asphalt felt and coatings;

(ii) Category 13. Boilers and other fuel burning equipment;

(iii) Category 33. Galvanizing & Pipe coating;

(iv) Category 39. Gray iron and steel foundries, malleable iron foundries, steel investment foundries, steel foundries 100 or more tons/yr. metal charged (not elsewhere identified);

(v) Category 40. Gypsum products;

(vi) Category 45. Liquid Storage Tanks subject to OAR division 232;

(vii) Category 56. Non-Ferrous Metal Foundries 100 or more tons/yr. of metal charged;

(viii) Category 57. Organic or Inorganic Industrial Chemical Manufacturing;

(ix) Category 62. Perchloroethylene Dry Cleaning;

(x) Category 73. Secondary Smelting and/or Refining of Ferrous and Non-Ferrous Metals; or

(xi) Category 85. All Other Sources not listed in Table 1 of OAR 340-216-8010 that would have actual emissions, if the source were to operate uncontrolled, of 5 or more tons a year of direct PM<sub>2.5</sub> or PM<sub>10</sub> if located in a PM<sub>2.5</sub> or PM<sub>10</sub> non-attainment or maintenance area, or 10 or more tons of any single criteria pollutant in any part of the state; and

(B) The actual emissions from the calendar year immediately preceding the invoice date, and projected emissions for the current calendar year are less than 5 tons/yr. PM<sub>10</sub> in a PM<sub>10</sub> nonattainment or maintenance area, and less than 10 tons/yr. for each criteria pollutant; and

(C) The source is not considered an air quality problem or nuisance source by DEQ.

(b) High Fee — Any source required to have a Simple ACDP (Table 1, Part B of OAR 340-216-8010) that does not qualify for the Low Fee will be assessed the High Fee.

(c) If DEQ determines that a source was invoiced for the Low Annual Fee but does not meet the Low Fee criteria outlined above, the source will be required to pay the difference between the Low and High Fees, plus applicable late fees in accordance with Table 2 of OAR 340-216-8020. Late fees start upon issuance of the initial invoice. In this case, DEQ will issue a new invoice specifying applicable fees.

(4) Permit Content.

(a) All relevant applicable requirements for source operation, including general ACDP conditions for incorporating generally applicable requirements, but excluding any federal requirements not adopted by the EQC;

(b) Generic PSELs for all pollutants emitted at more than the de minimis level according to OAR 340 division 222;

(c) Testing, monitoring, recordkeeping, and reporting requirements sufficient to determine compliance with the PSEL and other emission limits and standards, as necessary; and

(d) A permit duration not to exceed 5 years.

(5) Permit issuance procedures:

(a) Issuance of a new or renewed Simple ACDP requires public notice according to OAR 340 division 209 for Category II permit actions.

(b) Issuance of a modification to a Simple ACDP requires one of the following procedures, as applicable:

(A) Non-technical and non-NSR/PSD Basic and Simple technical modifications require public notice according to OAR 340, division 209 for Category I permit actions; or

(B) Issuance of non-NSR/PSD Moderate and Complex technical modifications require public notice according to OAR 340 division 209 for Category II permit actions.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A

Hist.: DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 4-2002, f. & cert. ef. 3-14-02; DEQ 8-2009, f. & cert. ef. 12-16-09; DEQ 1-2011, f. & cert. ef. 2-24-11; DEQ 5-2011, f. 4-29-11, cert. ef. 5-1-11; DEQ 4-2013, f. & cert. ef. 3-27-13; DEQ 9-2013(Temp), f. & cert. ef. 10-24-13 thru 4-22-14; Administrative correction, 5-21-14; DEQ 9-2014, f. & cert. ef. 6-26-14

# ADMINISTRATIVE RULES

## 340-216-0066

### Standard ACDPs

(1) Application requirements. Any person requesting a new, modified, or renewed Standard ACDP must submit an application according to OAR 340-216-0040 and include the following additional information as applicable:

(a) For new or modified Standard ACDPs that are not subject to NSR (OAR 340 division 224) but have emissions increases above the significant emissions rate, the application must include an analysis of the air quality and visibility (federal major sources only) impact of the source or modification, including meteorological and topographical data, specific details of models used, and other information necessary to estimate air quality impacts.

(b) For new or modified Standard ACDPs that are subject to NSR (OAR 340 division 224), the application must include the following additional information as applicable:

(A) A detailed description of the air pollution control equipment and emission reductions processes that are planned for the source or modification, and any other information necessary to determine that BACT or LAER technology, whichever is applicable, would be applied;

(B) An analysis of the air quality and visibility (federal major sources only) impact of the source or modification, including meteorological and topographical data, specific details of models used, and other information necessary to estimate air quality impacts; and

(C) An analysis of the air quality and visibility (federal major sources only) impacts, and the nature and extent of all commercial, residential, industrial, and other source emission growth, which has occurred since January 1, 1978, in the area the source or modification would affect.

(2) Fees. Applicants for a Standard ACDP must pay the fees in Table 2 of OAR 340-216-8020.

(3) Permit content. A Standard ACDP is a permit that contains:

(a) All applicable requirements, including general ACDP conditions for incorporating generally applicable requirements, but excluding any federal requirements not adopted by the EQC;

(b) Source specific PSELs or Generic PSELs, whichever are applicable, as specified in OAR 340, division 222;

(c) Testing, monitoring, recordkeeping, and reporting requirements sufficient to determine compliance with the PSEL and other emission limits and standards, as necessary; and

(d) A permit duration not to exceed 5 years.

(4) Permit issuance procedures.

(a) Issuance of a new or renewed Standard ACDP requires public notice as follows:

(A) For non-NSR permit actions, issuance of a new or renewed Standard ACDP requires public notice according to OAR 340 division 209 for Category III permit actions for any increase in allowed emissions, or Category II permit actions if no emissions increase is allowed.

(B) For NSR permit actions, issuance of a new Standard ACDP requires public notice according to OAR 340 division 209 for Category IV permit actions.

(b) Issuance of a modified Standard ACDP requires one of the following, as applicable:

(A) Non-technical modifications and non-NSR Basic and Simple technical modifications require public notice according to OAR 340 division 209 for Category I permit actions.

(B) Non-NSR/PSD Moderate and Complex technical modifications require public notice according to OAR 340 division 209 for Category II permit actions if no increase in allowed emissions, or Category III permit actions if an increase in emissions is allowed.

(C) NSR/PSD modifications require public notice according to OAR 340 division 209 for Category IV permit actions.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A

Hist.: DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 4-2002, f. & cert. ef. 3-14-02; DEQ 5-2011, f. 4-29-11, cert. ef. 5-1-11; DEQ 4-2013, f. & cert. ef. 3-27-13; DEQ 9-2014, f. & cert. ef. 6-26-14

## 340-216-0070

### Permitting Multiple Sources at a Single Adjacent or Contiguous Site

A single or contiguous site containing activities or processes that are covered by more than one General ACDP, or a source that contains processes or activities listed in more than one part of Table 1, Part A to Part C of OAR 340-216-8010 may obtain a Standard ACDP.

**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468 & 468A

Hist.: DEQ 47, f. 8-31-72, ef. 9-15-72; DEQ 63, f. 12-20-73, ef. 1-11-74; DEQ 107, f. & ef. 1-6-76; Renumbered from 340-020-0033, DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93, Renumbered from 340-020-0160; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1730; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 5-2011, f. 4-29-11, cert. ef. 5-1-11; DEQ 9-2014, f. & cert. ef. 6-26-14

## 340-216-0090

### Sources Subject to ACDPs and Fees

All air contaminant discharge sources listed in Table 1 of OAR 340-216-8010 must obtain a permit from the Department and are subject to fees in Table 2 of OAR 340-216-8020.

**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 468.020 & 468A.040

Stats. Implemented: ORS 468.065

Hist.: DEQ 47, f. 8-31-72, ef. 9-15-72; DEQ 63, f. 12-20-73, ef. 1-11-74; DEQ 107, f. & ef. 1-6-76; Renumbered from 340-020-0033.12; DEQ 125, f. & ef. 12-16-76; DEQ 20-1979, f. & ef. 6-29-79; DEQ 11-1983, f. & ef. 5-31-83; DEQ 6-1986, f. & ef. 3-26-86; DEQ 12-1987, f. & ef. 6-15-87; DEQ 17-1990, f. & cert. ef. 5-25-90; DEQ 27-1991, f. & cert. ef. 11-29-91; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93, Renumbered from 340-020-0165; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 20-1993(Temp), f. & cert. ef. 11-4-93; DEQ 13-1994, f. & cert. ef. 5-19-94; DEQ 21-1994, f. & cert. ef. 10-14-94; DEQ 22-1994, f. & cert. ef. 10-14-94; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 18-1997, f. 8-27-97, cert. ef. 10-1-97; DEQ 7-1998, f. & cert. ef. 5-5-98; DEQ 12-1998, f. & cert. ef. 6-30-98; DEQ 14-1998, f. & cert. ef. 9-14-98; DEQ 10-1999, f. & cert. ef. 7-1-99; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1750; DEQ 8-2000, f. & cert. ef. 6-6-00; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 5-2011, f. 4-29-11, cert. ef. 5-1-11; DEQ 9-2014, f. & cert. ef. 6-26-14

## 340-216-8010

### Table 1 — Activities and Sources

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A

Hist.: DEQ 9-2014, f. & cert. ef. 6-26-14

## 340-216-8020

### Table 2 — Air Contaminant Discharge Permits

Sources referred to in Table 1 of OAR 340-216-8010 are subject to air contaminant discharge permit fees in Table 2.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A

Hist.: DEQ 9-2014, f. & cert. ef. 6-26-14

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## Department of Fish and Wildlife Chapter 635

**Rule Caption:** Sport Chinook Fishery on Lookingglass Creek

**Adm. Order No.:** DFW 71-2014(Temp)

**Filed with Sec. of State:** 6-16-2014

**Certified to be Effective:** 6-18-14 thru 9-1-14

**Notice Publication Date:**

**Rules Amended:** 635-019-0090

**Rules Suspended:** 635-019-0090(T)

**Subject:** This amended rule closes the on-going Chinook angling season on Lookingglass Creek previously established through temporary rule. The harvest allocation for this fishery will be met by the date of closure.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

## 635-019-0090

### Inclusions and Modifications

(1) The **2014 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 2014 Oregon Sport Fishing Regulations.

(2) The John Day River from the Longview Ranch's Johnson Creek Division Bridge (located approximately 200 feet upstream from the mouth of the North Fork John Day River) upstream to the mouth of Rattlesnake Creek (19.5 miles) near the south end of Picture Gorge is open to angling for adult Chinook salmon from May 17 through June 15, 2014.

(a) The daily bag limit is two (2) adult Chinook and five (5) jacks; two daily limits in possession. It is illegal to continue fishing for jack Chinook once the adult daily bag limit is met.

(b) Statewide salmon gear restrictions apply.

(c) All other General, Statewide and Northeast Zone Regulations, as provided in the 2014 Oregon Sport Fishing Regulations, remain in effect.

# ADMINISTRATIVE RULES

(3) Lookingglass Creek from the Moses Creek Lane Bridge (County Road 42) to the confluence of Jarboe Creek is open to angling for adipose fin-clipped spring Chinook salmon from May 31 through 12:01 a.m. Wednesday, June 18, 2014.

(a) The daily bag limit is two (2) adipose fin-clipped adult Chinook and five (5) adipose fin-clipped jacks; two daily limits in possession. It is illegal to continue fishing for jack Chinook once the adult bag limit is met.

(b) During the duration of the spring Chinook angling season, the area closure listed for Lookingglass Creek in the Northeast Zone Special Regulations is modified to: Lookingglass Creek closed between Jarboe Creek and 200 feet upstream of the hatchery water intake.

(c) Hook gap restrictions listed in the Northeast Zone Special Regulations for Lookingglass Creek are removed for the duration of the spring Chinook angling season.

(d) All other General, Statewide and Northeast Zone Regulations, as provided in the 2014 Oregon Sport Fishing Regulations, remain in effect.

(4) The Imnaha River from the mouth to Summit Creek Bridge (River Mile 45) is open to angling for adipose fin-clipped adult Chinook salmon from June 21, 2014 until further notice.

(a) The daily bag limit is two (2) adipose fin-clipped adult Chinook and five (5) adipose fin-clipped jacks; two daily jack salmon limits in possession. It is illegal to continue fishing for jack Chinook once the adult bag limit is met.

(b) All other General, Statewide and Northeast Zone Regulations, as provided in the 2014 Oregon Sport Fishing Regulations, remain in effect.

(5) The Wallowa River from a deadline at the lower end of Minam State Park upstream to the confluence with the Lostine River is open to angling for adipose fin-clipped adult Chinook salmon from June 21, 2014 until further notice.

(a) The daily bag limit is two (2) adipose fin-clipped adult Chinook and five (5) adipose fin-clipped jacks; two daily jack salmon limits in possession. It is illegal to continue fishing for jack Chinook once the adult bag limit is met.

(b) All other General, Statewide and Northeast Zone Regulations, as provided in the 2014 Oregon Sport Fishing Regulations, remain in effect.

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 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. 8-8-11, 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

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**Rule Caption:** Opening of Spring Chinook Fishery In the Imnaha River Delayed

**Adm. Order No.:** DFW 72-2014(Temp)

**Filed with Sec. of State:** 6-19-2014

**Certified to be Effective:** 6-19-14 thru 9-1-14

**Notice Publication Date:**

**Rules Amended:** 635-019-0090

**Rules Suspended:** 635-019-0090(T)

**Subject:** This amended rule rescinds the scheduled start, June 21, 2014, of the recreational spring Chinook salmon fishery in the Imnaha River. This opportunity to harvest adipose fin-clipped adult Chinook salmon and adipose fin-clipped jack Chinook salmon, which are in excess of the Department's hatchery production needs in the Imnaha River may be re-scheduled if sufficient numbers of harvestable fish reach the fishery area.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

## 635-019-0090

### Inclusions and Modifications

(1) The 2014 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 2014 Oregon Sport Fishing Regulations.

(2) The Wallowa River from a deadline at the lower end of Minam State Park upstream to the confluence with the Lostine River is open to angling for adipose fin-clipped adult Chinook salmon from June 21, 2014 until further notice.

(a) The daily bag limit is two (2) adipose fin-clipped adult Chinook and five (5) adipose fin-clipped jacks; two daily jack salmon limits in possession. It is illegal to continue fishing for jack Chinook once the adult bag limit is met.

(b) All other General, Statewide and Northeast Zone Regulations, as provided in the 2014 Oregon Sport Fishing Regulations, remain in effect.

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 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-

# ADMINISTRATIVE RULES

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

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**Rule Caption:** Additional Opportunity for Personal Use Harvest of Pacific Lamprey at Willamette Falls Allowed

**Adm. Order No.:** DFW 73-2014(Temp)

**Filed with Sec. of State:** 6-20-2014

**Certified to be Effective:** 6-23-14 thru 10-31-14

**Notice Publication Date:**

**Rules Amended:** 635-017-0090

**Rules Suspended:** 635-017-0090(T)

**Subject:** This amended rule allows for three additional days for personal use harvest of Pacific lamprey at Willamette Falls, on Tuesday, June 24 through Thursday, June 26, 2014 by individuals with the required permit. The season modification provides opportunity for harvest of Pacific lamprey that may become stranded due to the scheduled installation of water flow devices at Willamette Falls. All other regulations for the harvest of Pacific lamprey remain unchanged.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

## 635-017-0090

### Inclusions and Modifications

(1) The **2014 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 2014 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 with the exception of Tuesday, June 24 through Thursday, June 26, 2014;

(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.

(3) Sandy River (Multnomah/Clackamas Co.) mainstem and tributaries upstream from ODFW markers at the mouth of the Salmon River, including the Salmon River:

(a) Open for adipose fin-clipped steelhead and non-adipose fin-clipped steelhead harvest July 1–August 31.

(b) Angling restricted to artificial flies and lures with a single point hook no larger than 1/2 inch gap (size 1) and multiple point hook no larger than 3/8 inch gap (size 4).

(c) No limit on size or number of brook trout taken. Catch limits on other trout species do not apply to brook trout.

#### (4) Santiam River:

(a) Rainbow Trout: The daily bag limit for adipose fin-clipped rainbow trout is increased from two (2) to five (5) in the mainstem Santiam River, the North Fork to the markers upstream of Packsaddle Park, and in the South Fork to the markers below Foster Dam (excluding all tributaries) beginning June 10 through October 31, 2014 with no minimum length requirements.

(b) Steelhead: The daily bag limit for adipose fin-clipped steelhead is increased to one (1) additional adult adipose fin-clipped steelhead per day in the mainstem Santiam River, the Little North Fork, the North Fork up to the markers in Packsaddle Park, and in the South Fork to the markers below Foster Dam beginning June 10 through October 31, 2014.

(5) Effective January 1, 2013, the use of barbless hooks is required when angling for salmon, steelhead, or trout in the mainstem Willamette River downstream of Willamette Falls (including Multnomah Channel and the Gilbert River) and in the lower Clackamas River upstream to the Highway 99E Bridge.

(6) Liberalized bag limits for EE Wilson Pond are in effect from June 13 through June 30, 2014 as follows:

(a) Rainbow Trout: the daily bag limit for rainbow trout is increased from five to ten in possession.

(b) Bass: the daily bag limit for bass is increased from five to ten in possession.

(c) All other regulations as shown in the **2014 Oregon Sport Fishing Regulations**, including rules regarding wanton waste, remain in effect.

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. & cert. 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;

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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

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**Rule Caption:** Three Rivers Angling Regulations Modified Effective June 30, 2014

**Adm. Order No.:** DFW 74-2014(Temp)

**Filed with Sec. of State:** 6-23-2014

**Certified to be Effective:** 6-30-14 thru 9-30-14

**Notice Publication Date:**

**Rules Amended:** 635-014-0090

**Subject:** The rule modifications delay the spring Chinook fishery closure at Three Rivers from July 1 until July 16, 2014 in order to allow anglers greater opportunity to harvest hatchery spring Chinook by extending the season.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

## 635-014-0090

### Inclusions and Modifications

(1) The **2014 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 **2014 Oregon Sport Fishing Regulations** pamphlet.

(2) Notwithstanding all other requirements provided in the 2014 Oregon Sport Fishing Regulations pamphlet, the following additional rules apply to adult salmon angling in waters of the Northwest Zone:

(a) All waters of the Necanicum River Basin, Nehalem River Basin (including North Fork), Tillamook Bay Basin, (including the Miami, Kilchis, Wilson, Trask, and Tillamook rivers), and the Nestucca River Basin (including the Little Nestucca) Salmon River, Siletz River (including Drift Creek), and Yaquina River that are open for Chinook salmon are limited to no more than 2 adult non fin-clipped Chinook salmon per day, and 10 adult non fin-clipped Chinook salmon in the seasonal aggregate when combined with all other waters in the Northwest Zone with a 10 adult non fin-clipped Chinook salmon seasonal aggregate limit. Seasonal aggregate applies to all adult non fin-clipped Chinook salmon retained between August 1 and December 31 except in the Nehalem Basin where the seasonal aggregate applies to all adult non fin-clipped Chinook salmon retained between July 1 and December 31.

(b) Three Rivers (Nestucca Basin, Tillamook/Yamhill Co.) mainstem:

(A) Open for adipose fin-clipped steelhead all year. Open for adipose fin-clipped spring Chinook salmon April 1–July 15;

(B) Closed from mouth upstream to hatchery weir deadline July 16–Sept. 30;

(C) From May 1–July 15, use of leaders longer than 36 inches is prohibited. Hooks are limited to no more than one single point, size 3/8-inch gap width (approximately size #2) or smaller hook; and

(D) All other requirements provided on page 34 and 35 of the 2014 Oregon Sport Fishing Regulations pamphlet apply.

(c) Within the Nehalem River Basin (including the North Fork) the following additional rules apply:

(A) Mainstem closed to all salmon angling upstream of Foss Road (CC) Bridge (RM 15.5) July 1 through December 31.

(B) Nehalem Bay tidewater from the jetty tips upstream to Miami-Foley Bridge on South Fork and North Fork Road Bridge on the North Fork is open for non adipose fin-clipped coho salmon from September 15 through the earlier of November 30 or attainment of an adult coho salmon quota of 700 non adipose fin-clipped coho salmon.

(C) The daily catch limit may include one adult non adipose fin-clipped coho salmon per day and one non adipose fin-clipped jack coho salmon per day, and no more than one total adult non adipose fin-clipped coho salmon in the seasonal aggregate from all waters in the Northwest

Zone with a one adult non adipose fin-clipped coho salmon seasonal aggregate limit (Nestucca River and Tillamook Bay Basin).

(d) Within the Tillamook Bay Basin the following additional rules apply:

(A) Tillamook Bay tidewater from the jetty tips upstream to Highway 101 Bridge on Miami, Kilchis, Wilson, and Trask rivers and Burton Bridge on Tillamook River is open on Fridays and Saturdays only for non adipose fin-clipped coho salmon from September 20 through the earlier of November 30 or attainment of an adult coho salmon quota of 500 non adipose fin-clipped coho salmon.

(B) The daily catch limit may include one adult non adipose fin-clipped coho salmon per day and one non adipose fin-clipped jack coho salmon per day, and no more than one total adult non adipose fin-clipped coho salmon in the seasonal aggregate from all waters in the Northwest Zone with a one adult non adipose fin-clipped coho salmon seasonal aggregate limit (Nestucca River and Nehalem River Basin).

(e) Within the Nestucca River Basin (including the Little Nestucca River) the following rules apply:

(A) Mainstem Nestucca River upstream of First Bridge (RM 15.8) near Beaver closed to all salmon angling August 1 through December 31.

(B) Nestucca Bay tidewater (excluding Little Nestucca tidewater) from the bay mouth upstream to the Cloverdale Bridge (RM 7.1) is open on Sundays and Mondays only for non adipose fin-clipped coho salmon from September 15 through the earlier of November 25 or attainment of an adult coho salmon quota of 200 non adipose fin-clipped coho salmon.

(C) The daily catch limit may include one adult non adipose fin-clipped coho salmon per day and one non adipose fin-clipped jack coho salmon per day, and no more than one total adult non adipose fin-clipped coho salmon in the seasonal aggregate from all waters in the Northwest Zone with a one adult non adipose fin-clipped coho salmon seasonal aggregate limit (Nehalem River and Tillamook Bay Basin).

(f) Within the Siletz River Basin the following additional rules apply:

(A) Mainstem and tributaries above an ODFW marker sign approximately 1,200 feet upstream of Ojalla Bridge (RM 31) closed to Chinook August 1–December 31; Drift Creek (Siletz River Basin) upstream of the confluence with Quarry Creek at RM 8 is closed for Chinook salmon from August 1 through December 31;

(B) Siletz River and Bay upstream to an ODFW marker sign approximately 1,200 feet upstream of Ojalla Bridge (RM 31) is open for non adipose fin-clipped coho salmon from September 15 through November 30; and

(C) The daily catch limit may include one adult non adipose fin-clipped coho salmon per day and one non adipose fin-clipped jack coho salmon per day, and no more than 2 total adult non adipose fin-clipped coho salmon in the seasonal aggregate from all waters in the Northwest Zone and Southwest Zone with a 2 adult non adipose fin-clipped coho salmon seasonal aggregate limit (Yaquina River, Alsea River, Siuslaw River, Umpqua River, Beaver Creek (Ona Beach), Floras Creek/New River, Coos River, and Coquille River).

(g) Within the Yaquina River Basin the following additional rules apply:

(A) All waters of the Yaquina River upstream of the confluence of the Yaquina River and Big Elk Creek at RM 18.3 and all waters of Big Elk Creek (Yaquina River Basin) are closed for Chinook salmon from August 1 through December 31;

(B) The Yaquina River and Bay upstream to the confluence of the Yaquina River and Big Elk Creek are open for non adipose fin-clipped coho salmon from September 15 through November 30; and

(C) The daily catch limit may include one adult non adipose fin-clipped coho salmon per day and one non adipose fin-clipped jack coho salmon per day, and no more than 2 total adult non adipose fin-clipped coho salmon in the seasonal aggregate from all waters in the Northwest Zone and Southwest Zone with a 2 adult non adipose fin-clipped coho salmon seasonal aggregate limit (Siletz River, Alsea River, Siuslaw River, Umpqua River, Beaver Creek (Ona Beach), Floras Creek/New River, Coos River, and Coquille River).

(h) Within the Alsea River Basin the following additional rules apply:

(A) All waters of Drift Creek (Alsea River Basin) within the Drift Creek Wilderness Area and upstream are closed for Chinook salmon from August 1 through December 31;

(B) All waters of Five Rivers are closed for Chinook salmon from August 1 through December 31.

(C) The Alsea River and Bay upstream to the USFS River Edge Boat Landing are open for non adipose fin-clipped coho salmon from September 15 through November 30; and

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(D) The daily catch limit may include one adult non adipose fin-clipped coho salmon per day and one non adipose fin-clipped jack coho salmon per day, and no more than 2 total adult non adipose fin-clipped coho salmon in the seasonal aggregate from all waters in the Northwest Zone and Southwest Zone with a 2 adult non adipose fin-clipped coho salmon seasonal aggregate limit (Siletz River, Yaquina River, Siuslaw River, Umpqua River, Beaver Creek (Ona Beach), Floras Creek/New River, Coos River, and Coquille River).

(i) Within the Siuslaw River Basin the following additional rules apply:

(A) All waters of the Siuslaw River upstream of the confluence with Lake Creek at RM 30.0 are closed for Chinook salmon from August 1 through December 31;

(B) All waters of Lake Creek are closed for Chinook salmon August 1 through October 15 and all waters of Lake Creek upstream from the mouth of Indian Creek (RM 2.5) and downstream of Fish Creek (RM 17) are closed for angling for Chinook salmon the entire year and closed to all angling from September 1 through November 30;

(C) The Siuslaw River and Bay upstream to the confluence of the Siuslaw River with Lake Creek is open for non adipose fin-clipped coho salmon from September 15 through November 30; and

(D) Lake Creek upstream to the mouth of Indian Creek (RM 2.5) is open to non adipose fin-clipped coho salmon from October 16 through November 30;

(E) The daily catch limit may include one adult non adipose fin-clipped coho salmon per day and one non adipose fin-clipped jack coho salmon per day, and no more than 2 total adult non adipose fin-clipped coho salmon in the seasonal aggregate from all waters in the Northwest Zone and Southwest Zone with a 2 adult non adipose fin-clipped coho salmon seasonal aggregate limit (Yaquina River, Alsea River, Siletz River, Umpqua River, Beaver Creek (Ona Beach), Floras Creek/New River, Coos River, and Coquille River).

(j) Beaver Creek (at Ona Beach between Newport and Waldport) from footbridge west of Highway 101 upstream to the confluence of South Fork Beaver Creek (Ona Beach) open on Saturdays and Sundays ONLY for non adipose fin-clipped coho salmon from November 1–30 or until attainment of an adult coho quota of 150 fish. The daily catch limit may include one adult non adipose fin-clipped coho salmon per day and one non adipose fin-clipped jack coho salmon per day, and no more than 2 non adipose fin-clipped salmon in the seasonal aggregate from all waters in the Northwest Zone and Southwest Zone with a 2 adult non adipose fin-clipped coho seasonal aggregate limit (Siletz River, Yaquina River, Alsea River, Siuslaw River, Umpqua River, Floras Creek/New River, Coos River, and Coquille River).

(3) Effective January 1, 2013, the use of barbless hooks is required when angling for salmon, steelhead, or trout in the following areas:

(a) Within the Youngs Bay Select Area (Clatsop County) from the Highway 101 Bridge upstream to markers at the confluence of the Youngs and Klaskanine rivers including the lower Lewis and Clark River upstream to the Alternate Highway 101 Bridge, and the lower Walluski River upstream to the Highway 202 Bridge.

(b) In Gnat Creek (Clatsop County) from the railroad bridge upstream to the Aldrich Point Road Bridge.

(4) Effective January 1, 2014, all waters within the Northwest Zone are closed to the retention of white sturgeon and catch-and-release angling is allowed year-round.

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. 1-1-02 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 22-2009(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; DFW 130-2012(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

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**Rule Caption:** Spring Chinook Fisheries Open In the Lower Grande Ronde River.

**Adm. Order No.:** DFW 75-2014(Temp)

**Filed with Sec. of State:** 6-23-2014

**Certified to be Effective:** 6-27-14 thru 9-1-14

**Notice Publication Date:**

**Rules Amended:** 635-019-0090

**Rules Suspended:** 635-019-0090(T)

**Subject:** This amended rule allows recreational anglers opportunities to harvest adipose fin-clipped adult Chinook salmon and adipose fin-clipped jack Chinook salmon originating from the Lostine River, which are in excess of the Department's hatchery production needs, in the Lower Grande Ronde River beginning Friday, June 27 and ending Monday, June 30, 2014.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

**635-019-0090**

**Inclusions and Modifications**

(1) The 2014 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 2014 Oregon Sport Fishing Regulations.

(2) The Willowa River from a deadline at the lower end of Minam State Park upstream to the confluence with the Lostine River is open to angling for adipose fin-clipped adult Chinook salmon from June 21, 2014 until further notice.

(a) The daily bag limit is two (2) adipose fin-clipped adult Chinook and five (5) adipose fin-clipped jacks; two daily jack salmon limits in possession. It is illegal to continue fishing for jack Chinook once the adult bag limit is met.

(b) All other General, Statewide and Northeast Zone Regulations, as provided in the 2014 Oregon Sport Fishing Regulations, remain in effect.

(3) The Grande Ronde River from the Oregon State line upstream to a deadline posted 300 feet upstream of the Grande Ronde River Road bridge below Wildcat Creek, with exception of the reach of river approximately 200 feet upstream and 1300 feet downstream of the footbridge at the town of Troy, is open to angling for adult Chinook salmon from June 27 to June 30, 2014.

# ADMINISTRATIVE RULES

(a) The daily bag limit is two (2) adult Chinook and five (5) jacks; two daily limits in possession. It is illegal to continue fishing for jack Chinook once the adult daily bag limit is met.

(b) Statewide salmon gear restrictions apply.

(c) All other General, Statewide and Northeast Zone Regulations, as provided in the 2014 Oregon Sport Fishing Regulations, remain in effect.

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 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

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**Rule Caption:** Directed Commercial Sardine Fishery 2014 Interim Season Closes June 25, 2014.

**Adm. Order No.:** DFW 76-2014(Temp)

**Filed with Sec. of State:** 6-24-2014

**Certified to be Effective:** 6-25-14 thru 7-31-14

**Notice Publication Date:**

**Rules Amended:** 635-004-0375

**Subject:** This amended rule closes the directed commercial sardine fishery for the Interim 2014 season, effective at 12:01 a.m. Wednesday, June 25 through Monday, June 30, 2014. Modifications are needed to conform Oregon State regulations to federal rule changes announced on June 23, 2014 by the National Marine Fisheries Service (NMFS).

**Rules Coordinator:** Therese Kucera—(503) 947-6033

**635-004-0375**

**Scope, Inclusion, and Modification of Rules**

(1) The commercial coastal pelagic species fishery in the Pacific Ocean off Oregon is jointly managed by the state of Oregon and the federal government through the Pacific Fishery Management Council process. The **Code of Federal Regulations** provides federal requirements for this fishery, including but not limited to the time, place, and manner of taking coastal pelagic species. However, additional regulations may be promulgated subsequently by publication in the Federal Register, and these supersede, to the extent of any inconsistency, the Code of Federal Regulations. Therefore, the following publications are incorporated into Oregon Administrative Rule by reference:

(a) Code of Federal Regulations, Part 660, Subpart I, (October 1, 2012 ed.);

(b) Federal Register Vol. 78, No. 116, dated June 17, 2013 (78 FR 36117); and

(c) Federal Notice Of Pacific Sardine Directed Fishing Closure, dated June 23, 2014.

(2) Persons must consult the federal regulations in addition to division 4 to determine all applicable coastal pelagic species fishing requirements. Where federal regulations refer to the fishery management area, that area is extended from shore to three nautical miles from shore coterminous with the Exclusive Economic Zone.

(3) The Commission may adopt additional or modified regulations that are more conservative than federal regulations, in which case Oregon Administrative Rule takes precedence. See OAR 635-004-0205 through 635-004-0235 and 635-004-0380 through 635-004-0545 for additions or modifications to federal coastal pelagic species regulations.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 496.138, 496.162, 506.036, 506.109, 506.119 & 506.129

Stats. Implemented: ORS 496.162, 506.109 & 506.129

Hist.: DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12; DFW 110-2012(Temp), f. 8-21-12, cert. ef. 8-23-12 thru 9-14-12; Administrative correction 9-20-12; DFW 58-2013, f. & cert. ef. 6-19-13; DFW 90-2013(Temp), f. 8-20-13, cert. ef. 8-22-13 thru 9-14-13; DFW 76-2014(Temp), f. 6-24-14, cert. ef. 6-25-14 thru 7-31-14

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**Rule Caption:** Amend rules related to the Coastal Multi-Species Conservation and Management Plan.

**Adm. Order No.:** DFW 77-2014

**Filed with Sec. of State:** 6-24-2014

**Certified to be Effective:** 6-24-14

**Notice Publication Date:** 5-1-2014

**Rules Adopted:** 635-500-6775

**Rules Amended:** 635-500-0200, 635-500-0385, 635-500-0500, 635-500-0600, 635-500-4010, 635-500-4310, 635-500-4510, 635-500-4810, 635-500-5010, 635-500-5210

**Rules Repealed:** 635-500-0130, 635-500-0135, 635-500-0140, 635-500-0145, 635-500-0150, 635-500-0175, 635-500-0390, 635-500-0400, 635-500-0405, 635-500-0415, 635-500-0420, 635-500-0425, 635-500-0505, 635-500-0515, 635-500-0520, 635-500-0605, 635-500-0610, 635-500-0620, 635-500-0625, 635-500-0630, 635-500-4030, 635-500-4040, 635-500-4060, 635-500-4070, 635-500-4330, 635-500-4340, 635-500-4350, 635-500-4370, 635-500-4380, 635-500-4530, 635-500-4540, 635-500-4550, 635-500-4560, 635-500-4580, 635-500-4590, 635-500-4600, 635-500-4830, 635-500-4840, 635-500-4850, 635-500-4860, 635-500-4880, 635-500-4890, 635-500-5030, 635-500-5040, 635-500-5050, 635-500-5070, 635-500-5080, 635-500-5230, 635-500-5240, 635-500-5250, 635-500-5270, 635-500-5280, 635-500-5290, 635-500-5400

**Subject:** These adopted, amended and repealed rules are relating to implementation of the Coastal Multi-Species Conservation and Management Plan as determined necessary by the Oregon Fish and Wildlife Commission. Housekeeping and technical corrections to regulations relating to hatcheries and harvest opportunities; predators; regulatory programs; water quality; and adaptive management were performed as determined necessary to ensure rule consistency.

This is a re-filing without changes, due to a technical error by the Rules Coordinator, of a filing made on 6-10-14.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

# ADMINISTRATIVE RULES

## 635-500-0200

### Management Objectives for North Umpqua River Below Soda Springs Dam

The Department of Fish and Wildlife will emphasize summer and winter steelhead and spring chinook in the North Umpqua River below Soda Springs Dam. Coho shall be managed for the production of naturally produced coho with an option for a hatchery program consistent with provisions in OAR 635-500-6500 (Oregon Coast Coho Conservation Plan for the State of Oregon). Fall Chinook will be emphasized in other areas where better habitat exists. The Department shall proceed with programs and other efforts to achieve the following objectives, consistent with state law, agency policy and rule, and recognizing funding priorities for the agency. The following objectives will govern management of salmonid populations in the North Umpqua River basin below Soda Springs Dam.

(1) All issues related to management of salmon (except coho), steelhead, and cutthroat trout in this area are addressed in the Coastal Multi-Species Conservation and Management Plan (OAR 635-500-6775).

(2) Coho:

(a) Recover the naturally produced coho population in the North Umpqua River Basin consistent with the six measurable criteria for desired status contained in OAR 635-500-6500 (Oregon Coast Coho Conservation Plan for the State of Oregon).

(b) Recover Umpqua River Basin naturally produced coho salmon sufficiently to prevent restrictions on fisheries targeting other species or fin clipped hatchery coho, and sufficiently to provide for future harvest in the North Umpqua Basin consistent with 635-500-6500 (Oregon Coast Coho Conservation Plan for the State of Oregon).

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 506.109 & 506.129

Hist.: FWC 12-1986, f. & ef. 4-17-86, Renumbered from 635-500-0001; DFW 22-2007, f. & cert. ef. 4-5-07; DFW 60-2014, f. & cert. ef. 6-10-14; DFW 77-2014, f. & cert. ef. 6-24-14

## 635-500-0385

### Organization of Rules

Administrative rules for the Coos River basin contained in OAR 635-500-0385 through 635-500-0480 apply to all waters of the Coos River basin. All issues related to management of salmon (except coho), steelhead, and cutthroat trout in this basin are addressed in the Coastal Multi-Species Conservation and Management Plan (635-500-6775).

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 506.109 & 506.129

Hist.: FWC 110-1990, f. & cert. ef. 10-1-90; DFW 60-2014, f. & cert. ef. 6-10-14; DFW 77-2014, f. & cert. ef. 6-24-14

## 635-500-0500

### Organization of Rules

Administrative rules for the Tenmile Lakes basin contained in OAR 635-500-0500 through 635-500-0565 apply to all waters of the Tenmile Lakes basin. All issues related to management of salmon (except coho), steelhead, and cutthroat trout in this basin are addressed in the Coastal Multi-Species Conservation and Management Plan (635-500-6775).

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 506.109 & 506.129

Hist.: FWC 14-1991, f. 2-28-91, cert. ef. 3-1-91; DFW 60-2014, f. & cert. ef. 6-10-14; DFW 77-2014, f. & cert. ef. 6-24-14

## 635-500-0600

### Organization of Rules

Administrative rules for the Yaquina River basin contained in OAR 635-500-0600 through 635-500-0685 apply to all waters of the Yaquina River basin. All issues related to management of salmon (except coho), steelhead, and cutthroat trout in this basin are addressed in the Coastal Multi-Species Conservation and Management Plan (635-500-6775).

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 506.109 & 506.129

Hist.: FWC 15-1991, f. 2-28-91, cert. ef. 3-1-91; DFW 60-2014, f. & cert. ef. 6-10-14; DFW 77-2014, f. & cert. ef. 6-24-14

## 635-500-4010

### Organization of Rules

Administrative rules for the mid-coast small ocean tributary streams are contained in OAR 635-500-4020 through 635-500-4100. All issues related to management of salmon (except coho), steelhead, and cutthroat trout in these streams are addressed in the Coastal Multi-Species Conservation and Management Plan (635-500-6775).

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 5-1998, f. & cert. ef. 1-12-98; DFW 60-2014, f. & cert. ef. 6-10-14; DFW 77-2014, f. & cert. ef. 6-24-14

## 635-500-4310

### Organization of Rules

Administrative rules for the Salmon River Basin fish management plan are contained in OAR 635-500-4320 through 635-500-4410. All issues related to management of salmon (except coho), steelhead, and cutthroat trout in this basin are addressed in the Coastal Multi-Species Conservation and Management Plan (635-500-6775).

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 5-1998, f. & cert. ef. 1-12-98; DFW 60-2014, f. & cert. ef. 6-10-14; DFW 77-2014, f. & cert. ef. 6-24-14

## 635-500-4510

### Organization of Rules

Administrative rules for the Siletz River Basin fish management plan are contained in OAR 635-500-4520 through 635-500-4640. All issues related to management of salmon (except coho), steelhead, and cutthroat trout in this basin are addressed in the Coastal Multi-Species Conservation and Management Plan (635-500-6775).

Stat. Auth.: ORS 496.138, 496.146, 506.119

Stats. Implemented: ORS 506.109, 506.129

Hist.: DFW 5-1998, f. & cert. ef. 1-12-98; DFW 60-2014, f. & cert. ef. 6-10-14; DFW 77-2014, f. & cert. ef. 6-24-14

## 635-500-4810

### Organization of Rules

Administrative rules for the Alsea River Basin fish management plan are contained in OAR 635-500-4820 through 635-500-4930. All issues related to management of salmon (except coho), steelhead, and cutthroat trout in this basin are addressed in the Coastal Multi-Species Conservation and Management Plan (635-500-6775).

Stat. Auth.: ORS 496.138, 496.146, 506.119

Stats. Implemented: ORS 506.109, 506.129

Hist.: DFW 5-1998, f. & cert. ef. 1-12-98; DFW 60-2014, f. & cert. ef. 6-10-14; DFW 77-2014, f. & cert. ef. 6-24-14

## 635-500-5010

### Organization of Rules

Administrative rules for the Siletz River Basin fish management plan are contained in OAR 635-500-4520 through 635-500-4640. All issues related to management of salmon (except coho), steelhead, and cutthroat trout in this basin are addressed in the Coastal Multi-Species Conservation and Management Plan (635-500-6775).

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 5-1998, f. & cert. ef. 1-12-98; DFW 60-2014, f. & cert. ef. 6-10-14; DFW 77-2014, f. & cert. ef. 6-24-14

## 635-500-5210

### Organization of Rules

Administrative rules for the Siuslaw River Basin fish management plan are contained in OAR 635-500-5220 through 635-500-5340. All issues related to management of salmon (except coho), steelhead, and cutthroat trout in this basin are addressed in the Coastal Multi-Species Conservation and Management Plan (OAR 635-500-6775).

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 5-1998, f. & cert. ef. 1-12-98; DFW 60-2014, f. & cert. ef. 6-10-14; DFW 77-2014, f. & cert. ef. 6-24-14

## 635-500-6775

### Implementing the Coastal Multi-Species Conservation and Management Plan

(1) Policy. The Coastal Multi-Species Conservation and Management Plan (CMP) (State of Oregon 2014, available at the Department's Salem office or [www.dfw.state.or.us](http://www.dfw.state.or.us)) implements the State's strategy for protecting, enhancing and utilizing Oregon populations of Chinook salmon, spring Chinook salmon, chum salmon, winter steelhead, summer steelhead, and coastal cutthroat trout along the Oregon coast from Elk River near Cape Blanco to the Necanicum River near Seaside. The CMP is based on the premise that the Oregon Plan for Salmon and Watersheds provides the best vehicle for securing partnerships, both private and governmental, to successfully implement the actions called for in this plan. This rule describes the Commission's contribution toward this collective effort and directs the Department's implementation of the CMP. This rule describes the Department's role in implementing the CMP consistent with the Department's statutory authorities and the Native Fish Conservation Policy (OAR 635-007-0502 thru 635-007-0505). The rule is not intended to be a rigid recipe but rather to identify the range of opportunities the Department should pursue and how the effectiveness of those opportunities should be

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evaluated, following the template first established in the Native Fish Conservation Policy.

(2) Description of Species Management Units (SMUs) and Populations.

The SMUs for Oregon Coastal salmon, steelhead, and trout which are addressed in the CMP are comprised of geographical strata and independent populations, as listed in Table 2 of the CMP.

(3) Desired Status. The first desired status goal for Oregon Coastal salmon, steelhead and trout SMUs is to assure that all populations that are currently viable remain so, and that those not viable become so. The second goal is that eventual improvements in salmon, steelhead and trout survival from management actions provide for all populations to be highly viable and productive enough that they can provide greater ecological and fisheries benefits than are currently being provided. The desired status goals for the SMUs shall be achieved when:

(a) For the first desired status goal, viable populations identified in Table A-II: 11 of the CMP maintain the current level of metrics and scores identified in this table and populations that are not viable in this table (excluding Netarts chum, which may not be an independent population) have metrics and scores indicating they are viable, and

(b) For the second desired status goal, all independent Oregon Coastal salmon, steelhead and trout populations pass all of the measurable criteria for highly viable status. Measurable criteria for the second desired status of Oregon Coastal salmon, steelhead and trout SMUs are defined in Table A-III: 1 of the CMP for the following primary biological attributes:

(A) Abundance (adult fish abundance for constituent populations);

(B) Productivity (standardized rate of population growth for constituent natural populations);

(C) Persistence (forecast likelihood of SMU persistence in the near and long terms);

(D) Spatial structure (distribution of populations within unit and population connectivity); and

(E) Diversity (within and among population diversity);

(c) While criteria for survival rate to each critical life history stage cannot yet be developed with the available information and monitoring, staff shall establish such criteria for these biological attributes when adequate information and monitoring are available.

(4) Current Status. The current status of each Oregon Coastal salmon, steelhead and trout SMU at the time of the adoption of this rule is described in the CMP. The Overall Status Assessment Approach section of the Current Status chapter and Table A-II: 11 of the CMP summarize the biological attributes, criteria and metrics used to assess the status of each SMU. Those biological attributes, criteria, and metrics are adopted by reference into this rule.

(5) Primary Limiting Factors.

(a) Numerous factors contribute to the gap between current and desired status of populations comprising the Oregon Coastal salmon, steelhead and trout SMUs. Marine survival of salmon, steelhead and trout associated with ocean conditions is the largest single factor regulating salmon, steelhead and trout productivity and abundance at the SMU scale. Although ocean conditions are not manageable at the scale of this plan and are thus not considered a primary limiting factor, attention to other limiting factors will be heightened during periods of poor ocean conditions.

(b) The limiting factors generally causing the gap between current and desired status for the Oregon Coastal salmon, steelhead and trout SMUs that can be managed are broadly defined as:

(A) Hatchery interactions;

(B) Fishing and harvest impacts;

(C) Interactions with other species (including predators); and

(D) Habitat loss or degradation.

(c) Primary and secondary limiting factors are identified for each population within each SMU in Table 11 of the Desired Status and Limiting Factors chapter of the CMP. Staff will continue to help revise and identify new management actions addressing these factors to aid in reaching desired status. Staff may analyze the limiting factors at a finer, more localized scale when selecting or prioritizing management actions for specific areas within populations. These analyses may find primary and secondary factors different at a local scale than what was found at the SMU or population scale.

(6) Management Strategies. Management strategies to address limiting factors for each population are identified in the Management Strategies and Actions chapter of the CMP. Staff shall consider and attempt to implement these management strategies designed for the SMUs as a whole, and for constituent populations as applicable, as mechanisms to reach the desired status. Short-term (1 to 5 years) and long-term (1 to 25 years) strategies include:

(a) Manage hatchery programs to provide optimal harvest opportunities while being consistent with Desired Status targets for wild populations identified in the CMP.

(b) Manage for wild fish emphasis or hatchery fish programs in the appropriate Management Areas as outlined in Figure 13 of the CMP and obtain Commission approval for starting new or eliminating existing hatchery programs in a management area relative to those in Table 13 and Table 14 of the CMP (excluding educational and research programs).

(c) Manage recreational and commercial fisheries to provide harvest and angling opportunities consistent with conservation of naturally produced salmon steelhead and trout, and achievement of desired status goals for each SMU.

(d) Quantify impacts of predation on wild and hatchery salmon, steelhead and trout; and develop and support programs to reduce predation.

(e) Prohibit the introduction of non-native fin fish species into flowing waters and develop and support programs designed to decrease illegal introductions of non-native species.

(f) Work with habitat restoration implementers to complete or update watershed assessments (as necessary), prioritize watersheds for restoration, and implement watershed-scale restoration work to restore natural processes.

(g) Work with habitat restoration implementers to increase restoration activities in lower mainstem rivers and estuaries.

(h) Protect all habitat areas where chum salmon are currently known to spawn, and prioritize habitat rehabilitation and barrier removal work that expands the habitat base for chum.

(i) Actively pursue and promote habitat protection and restoration necessary to achieve the goals and management strategies for aquatic resources within the CMP area by means of the tactics identified in Table 21 of the CMP.

(j) Coordinate with and advise other agencies, tribes, landowners, water users, watershed councils, and others to implement habitat protection and restoration activities, with an emphasis on habitat protection and a focus on priority projects (as opposed to non-priority and opportunistic projects).

(k) Consistent with the Habitat Mitigation Policy (OAR 635-415-0000) and natural ecosystem processes, work to prevent or reduce potential losses of fish production from land and water use actions and habitat alteration to the extent possible, encourage utilization of Best Management Practices for habitat protection when conducting land and water use projects, and promote greater coordination among government partners to facilitate protective measures against emerging threats such as placer mining, climate change, and invasive species.

(l) Consider and demonstrate preference for alternatives which address both natural hazard damage mitigation and restoration of natural disturbance regimes and habitat function when implementing and making recommendations about natural hazard mitigation actions that address hazards such as flooding or fire.

(7) Adaptive Management. The Department shall employ adaptive management principles within its statutory authority in support of optimizing fisheries and achieving the desired status goals for the SMUs. The Department's adaptive management of the SMUs will include five elements: research; monitoring; evaluation; a feedback loop; and reporting.

(a) Research. The Department shall support high priority research that addresses uncertainties related to SMU or population status and management strategies and actions needed to optimize fisheries and achieve desired status. Future research needs shall be identified during periodic assessments of the effectiveness of the CMP and with the development and update of research plans for the Department and Oregon Hatchery Research Center.

(b) Monitoring. The Department shall continue to identify, implement, and support monitoring needed to assess the status of each Oregon Coastal salmon, steelhead and trout SMU, strata, or populations relative to desired status criteria, evaluate habitat status trends, and understand fishery characteristics as funding and staffing allow.

(c) Evaluation. The Department shall identify and support evaluation needed to apply research and monitoring results to modify monitoring and management, re-assess status, and determine the effectiveness of management strategies and actions in achieving their intended outcomes.

(d) Feedback Loop. The Department shall review the results of reports and assessments identified in 635-500-6775(7)(e) and modify management strategies and actions as appropriate and within its statutory authority based on the review results. The Department shall implement the Adaptive Management processes and recommend to other agencies or entities, as necessary, appropriate modifications to management strategies and

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actions needed to optimize fisheries and support attainment of the desired status goals for each SMU. This feedback shall include refinement of management actions, research, monitoring and evaluation programs and desired status criteria based on the best available scientific information.

(A) The Department shall propose modifications to the CMP if any Oregon Coastal salmon, steelhead, or trout addressed in the CMP become listed under the federal ESA or if a status assessment determines an SMU has become non-viable.

(B) Deterioration in ESU status based on critical abundance thresholds and criteria identified in Table A-III:2 (with notes) of the CMP will also trigger management action re-evaluation, as well as possible additional management actions and CMP modification.

(C) Annual reports described in 635-500-6775(7)(e) will serve as an early warning system that will direct additional monitoring, evaluation, or management actions, if needed, based on annual review of monitoring data.

(e) Reporting. Annual and periodic evaluations of CMP implementation and SMU status shall be made available to the public. The Department shall prepare annual reports and conduct a 12 year (through 2026) status assessment of SMUs and populations. Additional assessments will be conducted as necessitated by new information or significant population declines.

(8) Impact on Other Native Fish Species. Management strategies identified in the CMP are likely to be beneficial to other native fish species present in the SMUs because they focus on restoring natural processes. New or modified actions shall consider impacts to other native species, as appropriate, to minimize harm and optimize benefits.

Stat. Auth.: ORS 496.138, 496.146, 506.119

Stats. Implemented: ORS 506.109, 506.129

Hist.: DFW 60-2014, f. & cert. ef. 6-10-14; DFW 77-2014, f. & cert. ef. 6-24-14

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**Rule Caption:** 2014 Ocean Salmon Regulations for State Marine Waters.

**Adm. Order No.:** DFW 78-2014

**Filed with Sec. of State:** 6-24-2014

**Certified to be Effective:** 6-24-14

**Notice Publication Date:** 5-1-2014

**Rules Amended:** 635-003-0003, 635-003-0077, 635-003-0078, 635-003-0085, 635-013-0003, 635-013-0007

**Rules Repealed:** 635-003-0003(T), 635-013-0003(T)

**Subject:** Amended rules relate to commercial and sport salmon fisheries in the Pacific Ocean. Modifications were also made to regulations for commercial and sport salmon fisheries in both the Elk River and Chetco River Terminal Areas. Housekeeping and technical corrections to the regulations were made to ensure rule consistency.

This is a re-filing without changes, due to a technical error by the Rules Coordinator, of a filing made on 6-10-14.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

## 635-003-0003

### Purpose and Scope

(1) The purpose of division 3 is to provide for management of commercial salmon fisheries off the Oregon Coast over which the state has jurisdiction.

(2) Division 3 incorporates into Oregon Administrative Rules, by reference, the annual ocean troll salmon specifications and management measures as adopted by the Pacific Fishery Management Council in its annual Ocean Salmon Management Measures and Impacts, as finalized in April 2014, and in addition to the extent they are consistent with these rules, Code of Federal Regulations (CFR), Title 50, Part 660, Subpart H (61FR34572, July 2, 1996, as amended to incorporate the standards in the Pacific Fishery Management Council referenced document). Therefore, persons must consult the Pacific Fishery Management Council referenced document and Federal Regulations in addition to division 3 to determine all applicable troll salmon fishing requirements. A copy of the Pacific Fishery Management Council referenced document and the Federal Regulations may be obtained by contacting the Pacific Fishery Management Council at [www.pcouncil.org](http://www.pcouncil.org) or at 7700 NE Ambassador Place, Suite 101, Portland, OR 97220-1384.

(3) To the extent not preempted by Federal law, these regulations apply within the State of Oregon's Fisheries Conservation Zone (out to fifty miles from shore).

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 506.129

Hist.: FWC 29-1989, f. 4-28-89, cert. ef. 5-1-89; FWC 25-1994, f. & cert. ef. 5-2-94; FWC 20-1996, f. & cert. ef. 4-29-96; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 31-1999, f. & cert.

ef. 5-3-99; DFW 38-2000, f. & cert. ef. 7-3-00; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 37-2002, f. & cert. ef. 4-23-02; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 32-2004, f. 4-22-04, cert. ef. 5-1-04; DFW 25-2005, f. & cert. ef. 4-15-05; DFW 26-2006(Temp), f. 4-20-06, cert. ef. 5-1-06 thru 10-27-06; Administrative correction, 11-16-06; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07; DFW 36-2008, f. 4-21-08, cert. ef. 5-1-08; DFW 52-2009, f. & cert. ef. 5-18-09; DFW 72-2010, f. & cert. ef. 5-25-10; DFW 34-2011, f. 4-27-11, cert. ef. 5-1-11; DFW 38-2012, f. 4-24-12, cert. ef. 5-1-12; DFW 28-2013(Temp), f. 4-25-13, cert. ef. 5-1-13 thru 5-15-13; DFW 33-2013, f. & cert. ef. 5-14-13; DFW 41-2014(Temp), f. & cert. ef. 5-8-14 thru 6-30-14; DFW 61-2014, f. & cert. ef. 6-10-14; DFW 78-2014, f. & cert. ef. 6-24-14

## 635-003-0077

### US-Canada Border to Cape Falcon

All vessels participating in the commercial ocean salmon fishery North of Cape Falcon must land their fish within the area North of Cape Falcon or in Garibaldi, Oregon, and within 24 hours of any closure of this fishery. All fishers landing salmon caught North of Cape Falcon must notify ODFW within one hour of delivery, limited fish sellers must notify ODFW within one hour of landing and prior to initiation of any sales, and all fishers intending to transport fish away from the port of landing must notify ODFW prior to transport away from the port of landing by calling (541) 867-0300 extension 271 or by sending an e-mail to: [nfalcon.trollreport@state.or.us](mailto:nfalcon.trollreport@state.or.us). Notification shall include vessel name and number, number of salmon by species, location of delivery, and estimated time of delivery.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 506.129

Hist.: DFW 6-2005, f. & cert. ef. 2-14-05; DFW 36-2005(Temp), f. & cert. ef. 5-4-05 thru 10-27-05; DFW 48-2005(Temp), f. 5-23-05, cert. ef. 5-24-05 thru 10-27-05; DFW 49-2005(Temp), f. 6-1-05, cert. ef. 6-3-05 thru 10-27-05; DFW 59-2005(Temp), f. 6-21-05, cert. ef. 6-26-05 thru 10-27-05; DFW 97-2005(Temp), f. & cert. ef. 8-23-05 thru 12-31-05; Administrative correction 1-19-06; DFW 43-2006(Temp), f. & cert. ef. 6-16-06 thru 11-16-06; DFW 70-2006(Temp), f. 7-28-06, cert. ef. 7-29-06 thru 12-31-06; DFW 85-2006(Temp), f. 8-18-06, cert. ef. 8-19-06 thru 2-14-07; DFW 93-2006(Temp), f. 9-7-06, cert. ef. 9-8-06 thru 12-31-06; Administrative correction 1-16-07; DFW 48-2007(Temp), f. 6-22-07, cert. ef. 6-23-07 thru 9-16-07; DFW 73-2007(Temp), f. 8-17-07, cert. ef. 8-18-07 thru 9-30-07; Administrative correction 10-16-07; DFW 66-2008(Temp), f. 6-20-08, cert. ef. 6-21-08 thru 10-31-08; Administrative correction 11-18-08; DFW 52-2009, f. & cert. ef. 5-18-09; DFW 61-2014, f. & cert. ef. 6-10-14; DFW 78-2014, f. & cert. ef. 6-24-14

## 635-003-0078

### Humbug Mountain to the Oregon/California Border

All vessels participating in any commercial ocean salmon fishery between Humbug Mountain and the Oregon/California Border that is managed under any salmon quota or harvest guideline must land their fish in Port Orford, Gold Beach, or Brookings, Oregon, and within 24 hours of any closure. All fishers landing salmon caught within this area during any season managed under any salmon quota or harvest guideline must notify ODFW within one hour of delivery, limited fish sellers must notify ODFW within one hour of landing and prior to initiation of any sales, and all fishers intending to transport fish away from the port of landing must notify ODFW prior to transport away from the port of landing by calling (541) 867-0300 extension 252 or by sending an e-mail to: [kmzor.trollreport@state.or.us](mailto:kmzor.trollreport@state.or.us). Notification shall include vessel name and number, number of salmon by species, location of delivery, and estimated time of delivery.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 506.129

Hist.: DFW 6-2005, f. & cert. ef. 2-14-05; DFW 71-2007(Temp), f. & cert. ef. 8-14-07 thru 8-31-07; Administrative correction 9-16-07; DFW 61-2014, f. & cert. ef. 6-10-14; DFW 78-2014, f. & cert. ef. 6-24-14

## 635-003-0085

### Extended Commercial Seasons

In addition to the open seasons prescribed in OAR 635-003-0003 there are open seasons for Chinook salmon as follows:

(1) Elk River Ocean Terminal Area — from November 1 through November 30 in the area described in section (1)(a) of this rule.

(a) The open area is all Pacific Ocean waters shoreward of a line drawn from Cape Blanco (42°50'20" N. Lat.) thence SW to Black Rock (42°49'24" N. Lat. 124°35'00" W. Long.), thence SSW to Best Rock (42°47'24" N. Lat. 124°35'42" W. Long.), thence SE to 42°40'30" N. Lat. 124°29'00" W. Long., thence to shore (Humbug Mountain).

(b) During the season described in this section (1), it is unlawful to take Chinook salmon less than 26 inches in total length; it is unlawful to use multipoint or barbed hooks or to fish more than four spreads per line; and it is unlawful to have in possession or to land more than 20 Chinook per day taken in this fishery. Landings are restricted to Port Orford.

(2) Chetco River Ocean Terminal Area - from October 12 through the earlier of October 31 or quota of 600 Chinook in the area described in section (3)(a) of this rule:

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(a) The open area is all Pacific Ocean waters inside an area south of the north shore of Twin Rocks (42°05'36" N. Lat.) to the Oregon/California border (42°00'00" N. Lat.) and seaward three nautical miles offshore;

(b) During the season described in this section (3) it is unlawful to take Chinook salmon less than 28 inches in total length; it is unlawful to use multipoint or barbed hooks, or to fish more than four spreads per line; and it is unlawful to have in possession or to land more than 20 Chinook per day taken in this fishery. Landings are restricted to Brookings.

(c) All vessels landing salmon caught in this season must report to ODFW within one hour of delivery or prior to transport away from the port of landing by either calling (541) 867-0300, ext. 252 or by e-mail to kmzort.trollreport@state.or.us. Notification shall include vessel name and number, number of salmon by species, port of landing, location of delivery, and estimated time of delivery.

Stat. Auth.: ORS 496.138, 496.146, & 506.119  
Stats. Implemented: ORS 506.129

Hist.: FWC 48-1984(Temp), f. & ef. 8-31-84; 57-1984(Temp), f. & ef. 9-15-84; FWC 59-1986(Temp), f. & ef. 9-19-86; FWC 106-1992(Temp), f. 10-8-92, cert. ef. 10-24-92; FWC 111-1992(Temp), f. 10-26-92, cert. ef. 10-27-92; FWC 62-1993, f. & cert. ef. 10-1-93; FWC 56-1994, f. 8-30-94, cert. ef. 9-1-94; FWC 80-1994(Temp), f. 10-25-94, cert. ef. 10-26-94; FWC 82-1994(Temp), f. 10-28-94, cert. ef. 10-30-94; FWC 81-1995, f. 9-29-95, cert. ef. 10-1-95; FWC 85-1995(Temp), f. & cert. ef. 10-20-95; FWC 56-1996, f. 9-27-96, cert. ef. 10-1-96; FWC 30-1997, f. & cert. ef. 5-5-97; FWC 66-1997(Temp), f. 10-24-97, cert. ef. 10-26-97; FWC 67-1997(Temp), f. 10-28-97, cert. ef. 10-29-97; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 31-1999, f. & cert. ef. 5-3-99; DFW 24-2000, f. 4-28-00, cert. ef. 5-1-00; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 26-2006(Temp), f. 4-20-06, cert. ef. 5-1-06 thru 10-27-06; DFW 78-2006(Temp), f. 8-7-06, cert. ef. 9-1-06 thru 12-15-06; Administrative correction 12-16-06; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07; DFW 65-2008(Temp), f. 6-20-08, cert. ef. 9-1-08 thru 12-31-08; DFW 128-2008(Temp), f. 10-9-08, cert. ef. 10-12-08 thru 12-31-08; Administrative correction 1-23-09; DFW 52-2009, f. & cert. ef. 5-18-09; DFW 102-2009(Temp), f. 8-27-09, cert. ef. 9-1-09 thru 12-31-09; DFW 132-2009(Temp), f. & cert. ef. 10-19-09 thru 10-31-09; Administrative correction 11-19-09; DFW 76-2010, f. 6-8-10, cert. ef. 8-1-10; DFW 147-2010(Temp), f. & cert. ef. 10-15-10 thru 10-31-10; DFW 151-2010(Temp), f. 10-19-10, cert. ef. 10-20-10 thru 10-31-10; DFW 153-2010(Temp), f. & cert. ef. 10-29-10 thru 10-31-10; Administrative correction 11-23-10; DFW 83-2011, f. 6-30-11, cert. ef. 7-1-11; DFW 62-2012, f. 6-12-12, cert. ef. 7-1-12; DFW 61-2014, f. & cert. ef. 6-10-14; DFW 78-2014, f. & cert. ef. 6-24-14

## 635-013-0003

### Purpose and Scope

(1) The purpose of Division 013 is to provide for management of sport salmon fisheries off the Oregon Coast over which the State has jurisdiction.

(2) This rule incorporates by reference, the annual ocean sport salmon specifications and management measures as adopted by the Pacific Fishery Management Council in its annual Ocean Salmon Management Measures and Impacts, as finalized in April 2014, and in addition to the extent they are consistent with these rules, Code of Federal Regulations (CFR), Title 50, Part 660, Subparts A and H.

(3) This rule also incorporates by reference the Oregon Sport Fishing Regulations.

(4) A copy of the Pacific Fishery Management Council referenced document and the Federal Regulations may be obtained by contacting the Pacific Fishery Management Council at [www.pcouncil.org](http://www.pcouncil.org) or at 7700 NE Ambassador Place, Suite 101, Portland, OR 97220-1384.

(5) To the extent not preempted by Federal law, these regulations apply within the State of Oregon's Fisheries Conservation Zone (out to fifty miles from shore).

Stat. Auth.: ORS 496.138, 496.146 & 506.119  
Stats. Implemented: ORS 496.162 & 506.129

Hist.: FWC 44-1984(Temp), f. & ef. 8-23-84; FWC 29-1989, f. 4-28-89, cert. ef. 5-1-89; FWC 52-1989(Temp), f. & cert. ef. 7-28-89; FWC 37-1990, f. & cert. ef. 5-1-90; 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 77-1995, f. 9-13-95, cert. ef. 1-1-95; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 72-1996, f. 12-21-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 31-1999, f. & cert. ef. 5-3-99; DFW 38-2000, f. & cert. ef. 7-3-00; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 28-2001, f. & cert. ef. 5-1-01; 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 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 32-2004, f. 4-22-04, cert. ef. 5-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 25-2005, f. & cert. ef. 4-15-05; 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; Administrative correction, 11-16-06; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07; 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 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 52-2009, f. & cert. ef. 5-18-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 72-2010, f. & cert. ef. 5-25-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 34-2011, f. 4-27-11, cert. ef. 5-1-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 38-2012, f. 4-24-12, cert. ef. 5-1-12; DFW 149-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 28-2013(Temp), f. 4-25-13, cert. ef. 5-1-13 thru 5-15-13; DFW 33-2013, f. & cert. ef. 5-14-13; DFW 41-2014(Temp), f. & cert. ef. 5-8-14 thru 6-30-14; DFW 61-2014, f. & cert. ef. 6-10-14; DFW 78-2014, f. & cert. ef. 6-24-14

## 635-013-0007

### Special South Coast Seasons

In addition to the open seasons prescribed in OAR 635-013-0005 there are open seasons for Chinook salmon as follows:

(1) Elk River Area.

(a) From November 1 through November 30 in all Pacific Ocean waters shoreward of a line drawn from Cape Blanco (42°50'20" N. Lat.) thence SW to Black Rock (42°49'24" N. Lat. 124°35'00" W. Long.), thence SSW to Best Rock (42°47'24" N. Lat. 124°35'42" W. Long.), thence SE to 42°40'30" N. Lat. 124°29'00" W. Long., thence to shore (Humburg Mountain);

(b) During the season described for the Elk River Area in section (1)(a) of this rule it is unlawful to take Chinook salmon less than 24 inches in length. Two Chinook salmon per day of which no more than one non fin-clipped Chinook salmon per day and 10 non fin-clipped Chinook salmon in the seasonal aggregate when combined with waters of Floras Creek/New River, Sixes River and Elk River. It is unlawful to use multipoint or barbed hooks.

(2) Chetco River Area.

(a) From October 1-12 in an area south of the north shore of Twin Rocks (42°05'36" N. Lat.) to the Oregon/California border (42°00'00" N. Lat.) and seaward three nautical miles offshore.

(b) During the seasons described in section (2)(a) of this rule it is unlawful to take Chinook salmon less than 24 inches in length. Two Chinook salmon per day of which no more than one non fin-clipped Chinook salmon per day and no more than 5 non fin-clipped Chinook salmon may be retained during the October 1-12 season. It is unlawful to use multipoint or barbed hooks.

Stat. Auth.: ORS 496.138, 496.146, & 506.119  
Stats. Implemented: ORS 496.162 & 506.129

Hist.: FWC 25-1982, f. & ef. 4-30-82; FWC 62-1983(Temp), f. & ef. 11-1-83; FWC 69-1984(Temp), f. & ef. 10-2-84; FWC 59-1985(Temp), f. & ef. 9-13-85; FWC 59-1986(Temp), f. & ef. 9-19-86; FWC 77-1986(Temp), f. & ef. 11-26-86; FWC 76-1987, f. & ef. 9-15-87; FWC 84-1988, f. & cert. ef. 9-9-88; FWC 83-1989, f. 8-31-89, cert. ef. 9-16-89; FWC 86-1990, f. 8-24-90, cert. ef. 9-1-90; FWC 42-1991, f. 4-29-91, cert. ef. 5-1-91; FWC 101-1992, f. 9-29-92, cert. ef. 10-1-92; FWC 114-1992(Temp), f. 10-26-92, cert. ef. 10-27-92; FWC 62-1993, f. & cert. ef. 10-1-93; FWC 56-1994, f. 8-30-94, cert. ef. 9-1-94; FWC 78-1994(Temp), f. 10-20-94, cert. ef. 10-21-94; FWC 81-1995, f. 9-29-95, cert. ef. 10-1-95; FWC 84-1995(Temp), f. 10-13-95, cert. ef. 10-16-95; FWC 86-1995(Temp), f. 10-20-95, cert. ef. 10-21-95; FWC 56-1996, f. 9-27-96, cert. ef. 10-1-96; FWC 30-1997, f. & cert. ef. 5-5-97; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 31-1999, f. & cert. ef. 5-3-99; DFW 24-2000, f. 4-28-00, cert. ef. 5-1-00; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 67-2008(Temp), f. 6-20-08, cert. ef. 8-1-08 thru 12-31-08; DFW 121-2008(Temp), f. & cert. ef. 10-2-08 thru 12-31-08; Administrative correction 1-23-09; DFW 52-2009, f. & cert. ef. 5-18-09; DFW 87-2009(Temp), f. 7-31-09, cert. ef. 8-1-09 thru 12-31-09; Administrative correction 1-25-10; DFW 76-2010, f. 6-8-10, cert. ef. 8-1-10; DFW 83-2011, f. 6-30-11, cert. ef. 7-1-11; DFW 151-2011(Temp), f. 10-27-11, cert. ef. 11-1-11 thru 11-30-11; Administrative correction, 12-27-11; DFW 62-2012, f. 6-12-12, cert. ef. 7-1-12; DFW 50-2013, f. 6-10-13, cert. ef. 7-1-13; DFW 61-2014, f. & cert. ef. 6-10-14; DFW 78-2014, f. & cert. ef. 6-24-14

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**Rule Caption:** Columbia River Zone 6 Treaty Indian Summer Commercial Gill Net Fishery Authorized.

**Adm. Order No.:** DFW 79-2014(Temp)

**Filed with Sec. of State:** 6-26-2014

**Certified to be Effective:** 6-30-14 thru 7-31-14

**Notice Publication Date:**

**Rules Amended:** 635-041-0076

**Rules Suspended:** 635-041-0076(T)

**Subject:** This amended rule authorizes the sales of fish caught in a Treaty tribal commercial gill net fishery in all of Zone 6 of the Columbia River in two fishing periods: from 6:00 a.m. Monday, June 30 through 6:00 p.m. Thursday, July 3 (3.5 days) and from 6:00 a.m. Monday, July 7 through 6:00 p.m. Friday, July 11 (4.5 days). Modifications are consistent with action taken June 26, 2014 by the Columbia River Compact, Departments of Fish & Wildlife of the States of Oregon and Washington, in cooperation with the Columbia River Treaty Tribes.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

## 635-041-0076

### Summer Salmon Season

(1) Salmon, steelhead, shad, walleye, catfish, bass, yellow perch, and carp may be taken for commercial purposes from Zone 6, in the Columbia River Treaty Indian Fishery, from 12:01 a.m. Monday, June 16 through 11:59 p.m. Thursday, July 31, 2014.

(2) Gear is restricted to subsistence fishing gear which includes hooknets, dipnets, and rod and reel with hook-and-line. Fish may also be taken by gill net during the following period(s): from 6:00 a.m. Monday, June 30, through 6:00 p.m. Thursday, July 3, 2014 (3.5 days); and from 6:00 a.m. Monday, July 7, through 6:00 p.m. Friday, July 11, 2014 (4.5 days). Gill nets have a 7-inch minimum mesh size restriction.

# ADMINISTRATIVE RULES

(3) Closed areas as set forth in OAR 635-041-0045 remain in effect with the exception of Spring Creek Hatchery sanctuary.

(4) White sturgeon between 43–54 inches in fork length caught in The Dalles Pool and John Day pools and white sturgeon between 38–54 inches in fork length caught in the Bonneville Pool may not be sold but may be retained for subsistence use. Fish caught during any open period may be sold at any time.

(5) Effective 12:01 a.m. Monday, June 16 through 11:59 p.m. Thursday, July 31, 2014, commercial sales of salmon, steelhead, walleye, shad, catfish, carp, bass and yellow perch caught in Yakama Nation tributary fisheries in the Klickitat River; Wind River; and Drano Lake are allowed for Yakama Nation members during those days and hours when these tributaries are open under lawfully enacted Yakama Nation fishing periods. White sturgeon between 43-54 inches in fork length harvested in tributaries within The Dalles or John Day pools and white sturgeon between 38-54 inches in fork length harvested in tributaries within Bonneville Pool may not be sold but may be kept for subsistence purposes.

Stat. Auth.: ORS 496.118 & 506.119

Stats. Implemented: ORS 506.109, 506.129 & 507.030

Hist.: DFW 5-2006, f. & cert. ef. 2-15-06; DFW 39-2006(Temp), f. & cert. ef. 6-8-06 thru 7-31-06; DFW 46-2006(Temp), f. & cert. ef. 6-20-06 thru 7-31-06; DFW 49-2006(Temp), f. 6-26-06, cert. ef. 6-27-06 thru 7-31-06; DFW 56-2006(Temp), f. 6-30-06, cert. ef. 7-3-06 thru 7-31-06; DFW 58-2006(Temp), f. 7-6-06, cert. ef. 7-10-06 thru 7-31-06; Administrative correction 8-22-06; DFW 46-2007(Temp), f. 6-15-07, cert. ef. 6-16-07 thru 9-13-07; DFW 49-2007(Temp), f. 6-22-07, cert. ef. 6-26-07 thru 9-13-07; DFW 53-2007(Temp), f. & cert. ef. 7-6-07 thru 7-31-07; Administrative correction 9-16-07; DFW 45-2008(Temp), f. 5-2-08, cert. ef. 5-5-08 thru 7-31-08; DFW 47-2008(Temp), f. 5-9-08, cert. ef. 5-11-08 thru 7-31-08; DFW 62-2008(Temp), f. 6-13-08, cert. ef. 6-16-08 thru 8-31-08; 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; DFW 80-2008(Temp), f. & cert. ef. 7-10-08 thru 8-31-08; DFW 87-2008(Temp), f. & cert. ef. 7-25-08 thru 8-31-08; DFW 94-2008(Temp), f. & cert. ef. 8-14-08 thru 9-30-08; Administrative correction 10-21-08; DFW 50-2009(Temp), f. 5-14-09, cert. ef. 5-16-09 thru 7-31-09; DFW 56-2009(Temp), f. 5-26-09, cert. ef. 5-27-09 thru 7-31-09; DFW 71-2009(Temp), f. 6-15-09, cert. ef. 6-16-09 thru 7-31-09; DFW 76-2009(Temp), f. 6-26-09, cert. ef. 6-30-09 thru 7-31-09; DFW 82-2009(Temp), f. 7-6-09, cert. ef. 7-8-09 thru 7-31-09; DFW 84-2009(Temp), f. 7-13-09, cert. ef. 7-15-09 thru 7-31-09; Administrative correction 8-21-09; DFW 48-2010(Temp), f. 4-26-10, cert. ef. 4-27-10 thru 7-31-10; DFW 51-2010(Temp), f. & cert. ef. 4-29-10 thru 7-31-10; DFW 56-2010(Temp), f. 5-10-10, cert. ef. 5-11-10 thru 7-31-10; DFW 68-2010(Temp), f. 5-18-10, cert. ef. 5-19-10 thru 7-31-10; DFW 71-2010(Temp), f. 5-19-10, cert. ef. 5-21-10 thru 6-16-10; DFW 74-2010(Temp), f. & cert. ef. 6-2-10 thru 7-31-10; DFW 80-2010(Temp), f. 6-14-10, cert. ef. 6-16-10 thru 7-31-10; DFW 87-2010(Temp), f. 6-25-10, cert. ef. 6-29-10 thru 7-31-10; DFW 97-2010(Temp), f. 7-8-10, cert. ef. 7-13-10 thru 7-31-10; DFW 101-2010(Temp), f. 7-19-10, cert. ef. 7-20-10 thru 7-31-10; DFW 105-2010(Temp), f. 7-23-10, cert. ef. 7-26-10 thru 7-31-10; Administrative correction 8-18-10; DFW 43-2011(Temp), f. & cert. ef. 5-10-11 thru 10-31-11; DFW 66-2011(Temp), f. 6-14-11, cert. ef. 6-16-11 thru 10-31-11; DFW 75-2011(Temp), f. 6-24-11, cert. ef. 6-27-11 thru 10-31-11; DFW 84-2011(Temp), f. 7-1-11, cert. ef. 7-5-11 thru 10-31-11; DFW 88-2011(Temp), f. 7-8-11, cert. ef. 7-10-11 thru 10-31-11; DFW 94-2011(Temp), f. 7-14-11, cert. ef. 7-18-11 thru 10-31-11; DFW 98-2011(Temp), f. 7-20-11, cert. ef. 7-25-11 thru 10-31-11; Administrative correction, 11-18-11; DFW 66-2012(Temp), f. 6-14-12, cert. ef. 6-18-12 thru 7-31-12; DFW 81-2012(Temp), f. 6-29-12, cert. ef. 7-3-12 thru 8-31-12; [DFW 87-2012(Temp), f. 7-11-12, cert. ef. 7-12-12 thru 8-31-12; Temporary Suspended by DFW 94-2012(Temp), f. & cert. ef. 7-27-12 thru 10-31-12]; DFW 57-2013(Temp), f. 6-12-13, cert. ef. 6-16-13 thru 7-31-13; DFW 63-2013(Temp), f. 6-27-13, cert. ef. 6-29-13 thru 7-31-13; DFW 69-2013(Temp), f. 7-5-13, cert. ef. 7-6-13 thru 7-31-13; DFW 71-2013(Temp), f. 7-11-13, cert. ef. 7-15-13 thru 7-31-13; DFW 77-2013(Temp), f. 7-18-13, cert. ef. 7-22-13 thru 7-31-13; Administrative correction, 8-21-13; DFW 66-2014(Temp), f. 6-12-14, cert. ef. 6-16-14 thru 7-31-14; DFW 79-2014(Temp), f. 6-26-14, cert. ef. 6-30-14 thru 7-31-14

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**Rule Caption:** Spring Sport Pacific Halibut All-Depth Season from Cape Falcon to Humbug Mountain Closes.

**Adm. Order No.:** DFW 80-2014(Temp)

**Filed with Sec. of State:** 6-26-2014

**Certified to be Effective:** 6-27-14 thru 12-24-14

**Notice Publication Date:**

**Rules Amended:** 635-039-0085

**Subject:** Amended rule closes the all-depth spring sport fishery for Pacific halibut in the area between Cape Falcon and Humbug Mountain, Oregon at 11:59 p.m. on Friday, June 27, 2014 due to the projected attainment of the pre-season quota of 113,229. This rule is consistent with regulations previously implemented by the federal government and the International Pacific Halibut Commission for the 2014 Oregon sport fishery for Pacific halibut.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

**635-039-0085**

**Halibut Seasons**

(1) The Pacific halibut sport fishery in Oregon is regulated by the federal government and the International Pacific Halibut Commission (IPHC). OAR chapter 635, division 39 incorporates into Oregon Administrative Rules, by reference:

(a) Title 50 of the Code of Federal Regulations, Part 300, Subpart E (October 1, 2013 ed.), as amended;

(b) Federal Register Vol. 79, No. 48, dated March 12, 2014 (79 FR 3906); and

(c) Federal Register Vol. 79, No. 65, dated April 4, 2014 (79 FR 18827).

(2) Therefore, persons must consult all publications referenced in this rule in addition to Division 039 to determine applicable halibut fishing seasons.

(3) Effective 11:59 p.m., Friday, June 27, 2014 the Central Oregon Coast Subarea (Cape Falcon to Humbug Mountain) spring all-depth season is closed to the retention of Pacific halibut.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 496.138, 496.162, 506.036, 506.109, 506.119, 506.129

Stats. Implemented: ORS 496.162, 506.129

Hist.: DFW 56-2005, f. 6-21-05, cert. ef. 7-1-05; DFW 89-2005(Temp), f. & cert. ef. 8-12-05 thru 12-12-05; DFW 107-2005(Temp), f. 9-14-05, cert. ef. 9-15-05 thru 10-31-05; DFW 121-2005(Temp), f. 10-12-05, cert. ef. 10-18-05 thru 12-31-05; Administrative correction 1-19-06; DFW 34-2006(Temp), f. 5-25-06, cert. ef. 5-27-06 thru 8-3-06; Administrative correction 8-22-06; DFW 3-2007, f. & cert. ef. 1-12-07; DFW 35-2007(Temp), f. 5-25-07, cert. ef. 5-26-07 thru 8-2-07; DFW 67-2007(Temp), f. 8-9-07, cert. ef. 8-12-07 thru 9-30-07; DFW 76-2007(Temp), f. 8-17-07, cert. ef. 8-24-07 thru 9-30-07; DFW 84-2007(Temp), f. 9-5-07, cert. ef. 9-15-07 thru 9-30-07; DFW 87-2007(Temp), f. 9-10-07, cert. ef. 9-14-07 thru 10-28-07; DFW 90-2007(Temp), f. 9-19-07, cert. ef. 9-20-07 thru 10-31-07; Administrative correction 11-17-07; DFW 57-2008(Temp), f. 5-30-08, cert. ef. 6-1-08 thru 7-31-08; DFW 81-2008(Temp), f. 7-11-08, cert. ef. 8-2-08 thru 9-30-08; DFW 92-2008(Temp), f. & cert. ef. 8-11-08 thru 9-30-08; DFW 101-2008(Temp), f. 8-25-08, cert. ef. 8-29-08 thru 9-30-08; DFW 107-2008(Temp), f. 9-5-08, cert. ef. 9-7-08 thru 12-31-08; DFW 111-2008(Temp), f. & cert. ef. 9-16-08 thru 12-31-08; DFW 120-2008(Temp), f. 9-25-08, cert. ef. 9-27-08 thru 12-31-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 39-2009, f. & cert. ef. 4-27-09; DFW 55-2009(Temp), f. & cert. ef. 5-22-09 thru 8-6-09; DFW 94-2009(Temp), f. 8-14-09, cert. ef. 8-16-09 thru 12-31-09; Administrative correction 1-25-10; DFW 32-2010, f. & cert. ef. 3-15-10; DFW 37-2010, f. 3-30-10, cert. ef. 4-1-10; DFW 100-2010(Temp), f. 7-15-10, cert. ef. 7-17-10 thru 10-31-10; DFW 118-2010(Temp), f. & cert. ef. 8-13-10 thru 10-31-10; Administrative correction 11-23-10; DFW 24-2011, f. & cert. ef. 3-22-11; DFW 58-2011(Temp), f. 5-27-11, cert. ef. 6-4-11 thru 8-4-11; DFW 82-2011(Temp), f. 6-30-11, cert. ef. 7-1-11 thru 8-4-11; DFW 85-2011(Temp), f. 7-5-11, cert. ef. 7-6-11 thru 10-31-11; DFW 114-2011(Temp), f. & cert. ef. 8-12-11 thru 10-31-11; DFW 135-2011(Temp), f. 9-21-11, cert. ef. 10-1-11 thru 12-31-11; DFW 39-2012, f. & cert. ef. 4-24-12; DFW 84-2012(Temp), f. & cert. ef. 7-5-12 thru 8-2-12; DFW 91-2012(Temp), f. 7-19-12, cert. ef. 7-22-12 thru 10-31-12; DFW 111-2012(Temp), f. 8-23-12, cert. ef. 8-24-12 thru 12-31-12; DFW 123-2012(Temp), f. 9-19-12, cert. ef. 9-24-12 thru 10-31-12; Administrative correction 11-23-12; DFW 65-2013(Temp), f. 6-27-13, cert. ef. 6-28-13 thru 8-2-13; DFW 78-2013(Temp), f. & cert. ef. 7-23-13 thru 10-31-13; DFW 86-2013(Temp), f. & cert. ef. 8-8-13 thru 10-31-13; Administrative correction, 11-22-13; DFW 36-2014, f. 4-29-14, cert. ef. 5-1-14; DFW 80-2014(Temp), f. 6-26-14, cert. ef. 6-27-14 thru 12-24-14

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**Rule Caption:** Adopt Rules for the Waterfowl Stamp Art Contest  
**Adm. Order No.:** DFW 81-2014(Temp)

**Filed with Sec. of State:** 6-30-2014

**Certified to be Effective:** 6-30-14 thru 12-26-14

**Notice Publication Date:**

**Rules Adopted:** 635-054-0045, 635-054-0050, 635-054-0055, 635-054-0060

**Subject:** The purpose of these rules is to describe the procedures and necessary accompanying information for submitting artwork for the 2015 waterfowl stamp, the criteria for selection of the winning designs, and the obligation of winning artists pursuant to ORS Chapter 496.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

**635-054-0045**

**Purpose**

The purpose of these rules is to describe the procedures and necessary accompanying information for submitting artwork for the 2015 waterfowl stamp, the criteria for selection of the winning designs, and the obligation of winning artists pursuant to ORS Chapter 496.

Stat. Auth.: ORS 496.012, 496.138, 496.146, 496.550, 496.555 & 497.151

Stats. Implemented: ORS 496.012, 496.138, 496.146, 496.550, 496.555 & 497.151

Hist.: DFW 81-2014(Temp), f. & cert. ef. 6-30-14 thru 12-26-14

**635-054-0050**

**Submission of Artwork: Requirements**

(1) Applicants shall submit artwork for the 2015 waterfowl stamp to the Department headquarters office by 5:00 pm on November 7, 2014.

(2) The 2015 waterfowl stamp artwork shall feature one or more ducks and/ or geese native to Oregon in their natural setting.

(3) Each entry shall measure 13 inches by 18 inches (horizontal or vertical) and shall be in any full color medium provided:

(a) No photographs, sculptures, fabric art or carvings will be accepted.

(b) The artwork shall be original and not computer-generated or computer-enhanced.

# ADMINISTRATIVE RULES

(4) The artwork shall be unsigned by the artist, and shall not have been used in production or entered into any other state or federal waterfowl stamp competition. Any artwork signed by the artist will not be accepted and will be returned to the artist without being judged.

(5) The artwork shall be completely dry. The Department is not responsible for damage to any artwork submitted wet or uncured.

(6) The entry may be mounted and/or matted, but it shall not be framed or under glass.

(7) Artists may submit more than one entry meeting the requirements herein.

(8) Each artist shall submit with his or her entry or entries a brief biographical description that includes the artist's background, experience, and previous artistic accomplishments. The Department reserves the right to use this information for publicity should the work be selected.

Stat. Auth.: ORS 496.012, 496.138, 496.146, 496.550, 496.555 & 497.151  
Stats. Implemented: ORS 496.012, 496.138, 496.146, 496.550, 496.555 & 497.151  
Hist.: DFW 81-2014(Temp), f. & cert. ef. 6-30-14 thru 12-26-14

## 635-054-0055

### Selection Process and Criteria

(1) A five-member panel including one Fish and Wildlife Commission member and four citizens chosen by the Director shall select the winning entry. Panel members may include representatives from the art community, wildlife profession, news media and conservation organizations.

(2) The selection panel shall make their selection based on:

- (a) Artistic composition;
- (b) Anatomical accuracy;
- (c) General rendering;
- (d) Background; and
- (e) General appeal.

(3) All artwork submissions shall be made available for public viewing following selection of the winning entry.

Stat. Auth.: ORS 496.012, 496.138, 496.146, 496.550, 496.555 & 497.151  
Stats. Implemented: ORS 496.012, 496.138, 496.146, 496.550, 496.555 & 497.151  
Hist.: DFW 81-2014(Temp), f. & cert. ef. 6-30-14 thru 12-26-14

## 635-054-0060

### Other Provisions

(1) Sale of 2015 waterfowl stamps by the Department shall end at the close of business on June 30, 2016. Excess stamps at that time shall be shredded after auditing of sales takes place.

(2) The Department shall award three thousand dollars (\$3,000) to the artist whose entry is selected for the waterfowl stamp.

(3) The winning entry shall become the exclusive property of the Department.

(4) The Department shall retain all reproduction rights and may review proposals for limited edition prints, posters, or other related art products.

(5) The artist shall sign, at no charge, up to two hundred (200) waterfowl stamps for sale by the Department.

Stat. Auth.: ORS 496.012, 496.138, 496.146, 496.550, 496.555 & 497.151  
Stats. Implemented: ORS 496.012, 496.138, 496.146, 496.550, 496.555 & 497.151  
Hist.: DFW 81-2014(Temp), f. & cert. ef. 6-30-14 thru 12-26-14

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**Rule Caption:** Spring Chinook Fisheries Re-Open In The Imnaha River.

**Adm. Order No.:** DFW 82-2014(Temp)

**Filed with Sec. of State:** 7-1-2014

**Certified to be Effective:** 7-5-14 thru 9-1-14

**Notice Publication Date:**

**Rules Amended:** 635-019-0090

**Rules Suspended:** 635-019-0090(T)

**Subject:** This amended rule allows recreational anglers opportunity to harvest adipose fin-clipped adult Chinook salmon Saturday July 5 and Sunday July 6, 2014, which are in excess of the Department's hatchery production needs; and harvest adipose fin-clipped jack Chinook salmon in the Imnaha River from Saturday July 5, 2014, until harvest guidelines are met.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

## 635-019-0090

### Inclusions and Modifications

(1) The 2014 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 2014 Oregon Sport Fishing Regulations.

(2) The Willowa River from a deadline at the lower end of Minam State Park upstream to the confluence with the Lostine River is open to angling for adipose fin-clipped adult Chinook salmon from June 21, 2014 until further notice.

(a) The daily bag limit is two (2) adipose fin-clipped adult Chinook and five (5) adipose fin-clipped jacks; two daily jack salmon limits in possession. It is illegal to continue fishing for jack Chinook once the adult bag limit is met.

(b) All other General, Statewide and Northeast Zone Regulations, as provided in the 2014 Oregon Sport Fishing Regulations, remain in effect.

(3) The Imnaha River from the mouth to Summit Creek Bridge (River Mile 45) is open to angling for adipose fin-clipped adult Chinook salmon from July 5 through July 6, 2014; and open to angling for adipose fin-clipped jack salmon from July 5 until further notice.

(a) From July 5 through July 6, the daily bag limit is two (2) adipose fin-clipped adult Chinook and five (5) adipose fin-clipped jacks; two daily jack salmon limits in possession. It is illegal to continue fishing for jack Chinook once the adult bag limit is met.

(b) After July 6, the daily bag limit is five (5) adipose fin-clipped jacks; two daily jack salmon limits in possession and adult Chinook salmon may not be retained.

(c) All other General, Statewide and Northeast Zone Regulations, as provided in the 2014 Oregon Sport Fishing Regulations, remain in effect.

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 57-1994(Temp), f. 8-30-94, cert. ef. 1-1-94; 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.

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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

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**Rule Caption:** 2014 Recreational Fall Chinook Season on the Lower Deschutes River.

**Adm. Order No.:** DFW 83-2014(Temp)

**Filed with Sec. of State:** 7-1-2014

**Certified to be Effective:** 8-1-14 thru 10-31-14

**Notice Publication Date:**

**Rules Amended:** 635-018-0090

**Subject:** This amended rule allows the sport harvest of fall Chinook salmon in the Lower Deschutes River from August 1 through October 31, 2014. The Deschutes River open area extends from the mouth at the I-84 Bridge upstream to Sherars Falls. It is unlawful to continue to angle from Sherars Falls downstream to the upper railroad trestle after taking the daily adult bag limit of fall Chinook. The daily bag limit is any 2 adult salmon per day and 5 jack salmon per day. Catch limits and restrictions applying to trout, steelhead, and coho salmon remain unchanged from those listed in the 2014 Oregon Sport Fishing Regulations.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

## 635-018-0090

### Inclusions and Modifications

(1) The 2014 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 2014 Oregon Sport Fishing Regulations.

(2) The Deschutes River from the mouth at the I-84 Bridge upstream to Sherars Falls is open to angling for trout, steelhead and Chinook salmon from August 1 through October 31, 2014.

(a) The catch limit for Chinook, during the period described in section (2) above, is any two adults and five jacks per day.

(b) Catch limits and restrictions applying to trout, steelhead, and coho salmon remain unchanged from those listed in the 2014 Oregon Sport Fishing Regulations for Area 1 of the Deschutes River.

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. ef. 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

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**Rule Caption:** Columbia River Mainstem Summer Commercial Drift Net Fishery Authorized.

**Adm. Order No.:** DFW 84-2014(Temp)

**Filed with Sec. of State:** 7-2-2014

**Certified to be Effective:** 7-7-14 thru 7-31-14

**Notice Publication Date:**

**Rules Amended:** 635-042-0027

**Rules Suspended:** 635-042-0027(T)

**Subject:** This amended rule sets a non-Indian commercial summer salmon drift gill net season for the mainstem Columbia River in Zones 1 thru 5. The season will commence at 7:00 p.m. Monday, July 7 and run through to 7:00 a.m. Tuesday, July 8, 2014 (12 hours). Allowed sales from this fishery include Chinook salmon, sockeye salmon and shad. Rule modifications were made consistent with Joint State Action taken July 1, 2014 by the Columbia River Compact, Departments of Fish & Wildlife of the States of Oregon and Washington.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

## 635-042-0027

### Summer Salmon Season

(1) Chinook salmon, sockeye salmon, and shad may be taken by drift gill net for commercial purposes in Zones 1 through 5, from 7:00 p.m. Monday, July 7 to 7:00 a.m. Tuesday, July 8, 2014 (12 hours).

(2) It is unlawful to use a gill net having a mesh size less than 8 inches. Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

(3) Closed waters, as described in OAR 635-042-0005 for Cowlitz River, Kalama A, Lewis A, Washougal River and Sandy River sanctuaries are in effect during open fishing periods as applicable.

Stat. Auth.: ORS 496.118, 506.109 & 506.129

Stats. Implemented: ORS 506.119 & 507.030

Hist.: DFW 5-2006, f. & cert. ef. 2-15-06; DFW 47-2006(Temp), f. 6-20-06, cert. ef. 6-26-06 thru 7-31-06; DFW 51-2006(Temp), f. & cert. ef. 6-29-06 thru 7-31-06; DFW 57-2006(Temp), f. 7-5-06, cert. ef. 7-6-06 thru 7-31-06; DFW 63-2006(Temp), f. 7-14-2006, cert. ef. 7-16-06 thru 7-31-06; DFW 68-2006(Temp), f. 7-28-06, cert. ef. 7-30-06 thru 7-31-06; Administrative correction 8-22-06; DFW 45-2007(Temp), f. 6-15-07, cert. ef. 6-25-07 thru 7-31-07; DFW 52-2007(Temp), f. & cert. ef. 7-6-07 thru 7-31-07; DFW 63-2008(Temp), f. 6-13-08, cert. ef. 6-24-08 thru 7-31-08; DFW 68-2008(Temp), f. 6-20-08, cert. ef. 6-21-08 thru 8-31-08; DFW 75-2008(Temp), f. 7-3-08, cert. ef. 7-7-08 thru 7-31-08; Administrative correction 8-21-08; DFW 72-2009(Temp), f. 6-15-09, cert. ef. 6-18-09 thru 7-31-09; Administrative correction 8-21-09; DFW 81-2010(Temp), f. 6-14-10, cert. ef. 6-17-10 thru 7-31-10; Administrative correction 8-18-10; DFW 67-2011(Temp), f. 6-14-11, cert. ef. 6-16-11 thru 7-31-11; Administrative correction 9-23-11; DFW 67-2012(Temp), f. 6-14-12, cert. ef. 6-17-12 thru 7-31-12; Administrative correction, 8-27-12; DFW 56-2013(Temp), f. 6-12-13, cert. ef. 6-16-13 thru 7-31-13; DFW 72-2013(Temp), f. 7-11-13, cert. ef. 7-15-13 thru 7-31-13; Administrative correction, 8-21-13; DFW 67-2014(Temp), f. 6-12-14, cert. ef. 6-16-14 thru 7-31-14; DFW 84-2014(Temp), f. 7-2-14, cert. ef. 7-7-14 thru 7-31-14

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**Rule Caption:** 2014 Columbia River Summer Recreational Fisheries Modified.

**Adm. Order No.:** DFW 85-2014(Temp)

**Filed with Sec. of State:** 7-2-2014

**Certified to be Effective:** 7-3-14 thru 7-31-14

**Notice Publication Date:**

**Rules Amended:** 635-023-0128

**Rules Suspended:** 635-023-0128(T)

**Subject:** This amended rule modifies the ongoing 2014 summer recreational salmon fishing seasons in the Columbia River. Modifications to regulations conform to regulation changes developed through this year's Pacific Fishery Management Council/North of Falcon process. Rule modifications were made consistent with Joint

# ADMINISTRATIVE RULES

State Action taken July 1, 2014 by the Columbia River Compact, Departments of Fish & Wildlife of the States of Oregon and Washington.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

## 635-023-0128

### Summer Sport Fishery

(1) The **2014 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 **2014 Oregon Sport Fishing Regulations**.

(2) Notwithstanding all other specifications and restrictions in the 2014 Oregon Sport Fishing Regulations:

(a) Effective June 16 through July 31 the mainstem Columbia River is open to the retention of adipose fin-clipped jack Chinook (12–24 inches in length) and adipose fin-clipped steelhead from the Astoria-Megler Bridge upstream to the Oregon/Washington border.

(b) Retention of sockeye salmon and adipose fin-clipped adult summer Chinook (longer than 24 inches in length) is allowed in the area from the Astoria-Megler Bridge upstream to Bonneville Dam during the period from July 3 through July 31 for sockeye; from July 3 through July 6, 2014 for adipose fin-clipped adult summer Chinook; and in the area from Bonneville Dam upstream to the Oregon/Washington border during the period from June 16 through July 31, 2014.

(c) The combined daily bag limit for adult salmon and steelhead is two fish. All sockeye are considered adults in the daily limit. Only adipose fin-clipped Chinook and steelhead may be retained. The daily limit for jacks is five fish.

[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

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**Rule Caption:** Spring Chinook Fishery to Re-open In the Lower Grande Ronde River.

**Adm. Order No.:** DFW 86-2014(Temp)

**Filed with Sec. of State:** 7-2-2014

**Certified to be Effective:** 7-5-14 thru 9-1-14

**Notice Publication Date:**

**Rules Amended:** 635-019-0090

**Rules Suspended:** 635-019-0090(T)

**Subject:** This amended rule allows recreational anglers opportunities to harvest adipose fin-clipped adult Chinook salmon and adipose fin-clipped jack Chinook salmon originating from the Lostine River, which are in excess of the Department's hatchery production needs, in the Lower Grande Ronde River beginning Friday, July 5 and ending Monday, July 7, 2014.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

## 635-019-0090

### Inclusions and Modifications

(1) The 2014 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 **2014 Oregon Sport Fishing Regulations**.

(2) The Willowa River from a deadline at the lower end of Minam State Park upstream to the confluence with the Lostine River is open to angling for adipose fin-clipped adult Chinook salmon from June 21, 2014 until further notice.

(a) The daily bag limit is two (2) adipose fin-clipped adult Chinook and five (5) adipose fin-clipped jacks; two daily jack salmon limits in possession. It is illegal to continue fishing for jack Chinook once the adult bag limit is met.

(b) All other General, Statewide and Northeast Zone Regulations, as provided in the **2014 Oregon Sport Fishing Regulations**, remain in effect.

(3) The Imnaha River from the mouth to Summit Creek Bridge (River Mile 45) is open to angling for adipose fin-clipped adult Chinook salmon from July 5 through July 6, 2014; and open to angling for adipose fin-clipped jack salmon from July 5 until further notice.

(a) From July 5 through July 6, the daily bag limit is two (2) adipose fin-clipped adult Chinook and five (5) adipose fin-clipped jacks; two daily jack salmon limits in possession. It is illegal to continue fishing for jack Chinook once the adult bag limit is met.

(b) After July 6, the daily bag limit is five (5) adipose fin-clipped jacks; two daily jack salmon limits in possession and adult Chinook salmon may not be retained.

(c) All other General, Statewide and Northeast Zone Regulations, as provided in the **2014 Oregon Sport Fishing Regulations**, remain in effect.

(4) The Grande Ronde River from the Oregon State line upstream to a deadline posted 300 feet upstream of the Grande Ronde River Road bridge below Wildcat Creek, with exception of the reach of river approximately 200 feet upstream and 1300 feet downstream of the footbridge at the town of Troy, is open to angling for adult Chinook salmon from July 5 to July 7, 2014.

(a) The daily bag limit is two (2) adult Chinook and five (5) jacks; two daily limits in possession. It is illegal to continue fishing for jack Chinook once the adult daily bag limit is met.

(b) Statewide salmon gear restrictions apply.

(c) All other General, Statewide and Northeast Zone Regulations, as provided in the **2014 Oregon Sport Fishing Regulations**, remain in effect.

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 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-

# ADMINISTRATIVE RULES

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

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**Rule Caption:** Recreational Sturgeon Fisheries Open In the Bonneville Pool and The Dalles Pool Closes.

**Adm. Order No.:** DFW 87-2014(Temp)

**Filed with Sec. of State:** 7-2-2014

**Certified to be Effective:** 7-11-14 thru 12-31-14

**Notice Publication Date:**

**Rules Amended:** 635-023-0095

**Rules Suspended:** 635-023-0095(T)

**Subject:** This amended rule authorizes two 2-day recreational white sturgeon retention fisheries in the Bonneville Pool and closes the recreational white sturgeon fishery in The Dalles Pool of the Columbia River. Fishing is allowed in the Bonneville Pool from Friday, July 11 through Saturday, July 12 and from Friday, July 18 through Saturday, July 19, 2014. The Dalles Pool sturgeon fishery closes at 12:01 a.m. Friday, August 1, 2014. Revisions are consistent with action taken July 1, 2014 by Columbia River Compact agencies of the States of Oregon and Washington.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

## 635-023-0095

### Sturgeon Season

(1) The **2014 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 **2014 Oregon Sport Fishing Regulations**.

(2) Effective 12:01 a.m. Saturday, June 14, 2014 the John Day Pool and adjacent tributaries are closed to retention of white sturgeon.

(3) Retention of white sturgeon between 38–54 inches in fork length is allowed Friday July 11, Saturday July 12, Friday July 18, and Saturday July 19, 2014 (4 days) in the mainstem Columbia River from Bonneville Dam upstream to The Dalles Dam (Bonneville Pool) including adjacent tributaries.

(4) Effective 12:01 a.m. Friday, August 1, 2014 The Dalles Pool and adjacent tributaries are closed to retention of white sturgeon.

(5) Effective January 1, 2014, the annual bag limit for white sturgeon is two (2) fish.

(6) Angling for sturgeon is prohibited from:

(a) Bonneville Dam downstream 9 miles to a line crossing the Columbia River from Navigation Marker 82 on the Oregon shore westerly to a boundary marker on the Washington shore upstream of Fir Point from May 1 through August 31;

(b) Highway 395 Bridge upstream to McNary Dam;

(c) From the west end of the grain silo at Rufus upstream to John Day Dam during May 1 through July 31;

(d) From the Dalles Dam downstream 1.8 miles to the east (upstream) dock at the Port of The Dalles boat ramp on the Oregon shore straight across to a marker on the Washington shore from May 1 through July 31, 2014; and

(e) The upper and lower ends of Sand Island and corresponding markers on the Oregon shoreline (slough at Rooster Rock State Park) from January 1 through April 30.

(7) The mainstem Columbia River from McNary Dam upstream to the Oregon-Washington border at river mile 309.5 is open to retention of white sturgeon with a fork length of 43–54 inches, seven days per week from February 1 through July 31.

(8) Retention of green sturgeon is prohibited all year in all areas.

(9) Catch-and-release angling is allowed year-round except as described above in sections (6)(a) through (6)(e).

(10) Effective January 1, 2014, the mainstem Columbia River from the mouth at Buoy 10 upstream to Bonneville including Oregon tributaries upstream to the mainline railroad bridges, is closed to the retention of white sturgeon.

Stat. Auth.: ORS 496.118, 506.109 & 506.129

Stats. Implemented: ORS 506.119 & 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. 2-11-11 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

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**Rule Caption:** Amend Rules to Correct Habitat Conservation Stamp Price through 2014

**Adm. Order No.:** DFW 88-2014(Temp)

**Filed with Sec. of State:** 7-7-2014

**Certified to be Effective:** 7-7-14 thru 12-31-14

**Notice Publication Date:**

**Rules Amended:** 635-095-0125

**Subject:** Amend rules to reflect current price of Habitat Conservation Stamp. This price is effective through December 31, 2014.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

## 635-095-0125

### Other Provisions

(1) The fee for the 2012–2014 Habitat Conservation Stamp is \$38.00 (plus \$2.00 agent fee). The fee for the 2015 Habitat Conservation Stamp, and any subsequent stamps thereafter, is \$18.00 (plus \$2.00 agent fee).

(2) Sale of Habitat Conservation Stamps by the Department shall end at the close of business on December 31, of the respective year. Stamps with numbers corresponding with the prints signed by the artist and the Governor will be retained. These stamps will only be distributed with the sale of the corresponding print. Excess stamps shall be shredded after auditing of sales takes place.

(3) The Department shall award one thousand dollars (\$1,000) to the artist whose entry is selected for the Habitat Conservation Stamp.

(4) The winning entry shall become the exclusive property of the Department.

# ADMINISTRATIVE RULES

(5) The Department shall retain all reproduction rights for limited edition prints or other promotional materials.

(6) The artist shall sign, at no charge, up to two hundred fifty (250) habitat conservation prints for sale by the Department. The monetary prize will be awarded after the artist has signed the prints.

Stat. Auth.: ORS 496.012, 496.138, HB 2127, 2011 OL Ch. 50  
Stats. Implemented: ORS 496, HB 2127, 2011 OL Ch. 50  
Hist.: DFW 13-2012, f. & cert. ef. 2-10-12; DFW 57-2012, f. & cert. ef. 6-11-12; DFW 156-2012(Temp), f. & cert. ef. 12-31-12 thru 6-28-13; DFW 51-2013, f. & cert. ef. 6-10-13; DFW 65-2014, f. 6-11-14, cert. ef. 7-4-14; DFW 88-2014(Temp), f. & cert. ef. 7-7-14 thru 12-31-14

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**Rule Caption:** Amend rules; change area of the Trask Wildlife Management Unit open during General Bow Season

**Adm. Order No.:** DFW 89-2014(Temp)

**Filed with Sec. of State:** 7-7-2014

**Certified to be Effective:** 7-7-14 thru 11-1-14

**Notice Publication Date:**

**Rules Amended:** 635-073-0000

**Subject:** OAR chapter 73 incorporates, by reference, the requirements for bow and muzzleloader hunting set out in the document entitled "2014 Oregon Big Game Regulations," into Oregon Administrative Rules. This rule amendment is to correct an error in the Big Game Regulations and would:

(1) Change the area of the Trask Wildlife Management Unit open during the General Elk Bow Season described on page 80 from the portion of the Wildlife Management Unit within the National Forest to the entire Wildlife Management Unit.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

## 635-073-0000

### Purpose and General Information

Bow Deer and Elk Hunts. Notwithstanding the provisions of the 2014 Oregon Big Game Regulations:

(1) The open area of the Trask Wildlife Management Unit described on page 80 is changed from within the National Forest (NF) and is the entire Unit. The bag limit is One Bull Elk in the Alsea, Chetco, and Trask Units; and within NF Lands in the Dixon, Evans Creek, Indigo, McKenzie, Rogue, and Santiam units.

(2) The purpose of these rules is to establish season dates, bag limits, areas and other restrictions for bow and muzzleloader hunting and controlled deer and elk youth hunts; pursuant to ORS Chapter 496.

(3) Controlled hunt tag numbers for 2014 for deer and elk bow and muzzleloader hunting and deer and elk youth hunts are listed in Tables 1 and 2 and are adopted and incorporated into OAR chapter 635, division 73 by reference.

(4) OAR chapter 73 incorporates, by reference, the requirements for bow and muzzleloader hunting and controlled deer and elk youth hunts set out in the document entitled "2014 Oregon Big Game Regulations," into Oregon Administrative Rules. Therefore, persons must consult the "2014 Oregon Big Game Regulations," in addition to OAR chapter 635, to determine all applicable requirements for bow and muzzleloader hunting and controlled deer and elk youth hunts. The annual Oregon Big Game Regulations are available at hunting license agents and regional, district and headquarters offices and website of the Oregon Department of Fish and Wildlife.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162  
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162  
Hist.: FWC 44-1988, f. & cert. ef. 6-13-88; FWC 18-1994, f. 3-30-94, cert. ef. 5-1-94; FWC 17-1996, f. 4-10-96, cert. ef. 4-15-96; FWC 35-1996, f. & cert. ef. 6-7-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 21-2000(Temp), f. 4-12-00, cert. ef. 4-12-00 thru 6-30-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 47-2001, f. & cert. ef. 6-13-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 59-2002, f. & cert. ef. 6-11-02; DFW 3-2003, f. 1-17-03, cert. ef. 1-20-03; DFW 50-2003, f. & cert. ef. 6-13-03; DFW 122-2003, f. 12-4-03, cert. ef. 2-2-04; DFW 130-2003(Temp), f. & cert. ef. 12-24-03 thru 3-1-04; DFW 53-2004, f. & cert. ef. 6-16-04; DFW 123-2004, f. 12-21-04, cert. ef. 2-1-05; DFW 53-2005, f. & cert. ef. 6-14-05; DFW 130-2005, f. 12-1-05, cert. ef. 2-1-06; DFW 22-2006(Temp), f. & cert. ef. 4-7-06 thru 10-4-06; DFW 41-2006, f. & cert. ef. 6-14-06; DFW 124-2006, f. 12-7-06, cert. ef. 2-1-07; DFW 42-2007, f. & cert. ef. 6-14-07; DFW 117-2007, f. 10-31-07, cert. ef. 2-1-08; DFW 60-2008, f. & cert. ef. 6-12-08; DFW 8-2009, f. & cert. ef. 2-3-09; DFW 66-2009, f. & cert. ef. 6-10-09; DFW 4-2010, f. 1-12-10, cert. ef. 2-1-10; DFW 83-2010, f. & cert. ef. 6-15-10; DFW 7-2011, f. 1-31-11, cert. ef. 2-1-11; DFW 62-2011, f. & cert. ef. 6-3-11; DFW 3-2012, f. 1-13-12, cert. ef. 2-1-12; DFW 58-2012, f. & cert. ef. 6-11-12; DFW 4-2013, f. 1-15-13, cert. ef. 2-1-13; DFW 53-2013, f. & cert. ef. 6-10-13; DFW 3-2014, f. & cert. ef. 1-22-14; DFW 63-2014, f. & cert. ef. 6-10-14; DFW 89-2014(Temp), f. & cert. ef. 7-7-14 thru 11-1-14

**Rule Caption:** Additional Harvest Opportunity for Holbrook Reservoir During Recreational Fishing Season

**Adm. Order No.:** DFW 90-2014(Temp)

**Filed with Sec. of State:** 7-10-2014

**Certified to be Effective:** 7-11-14 thru 12-31-14

**Notice Publication Date:**

**Rules Amended:** 635-021-0090

**Rules Suspended:** 635-021-0090(T)

**Subject:** This amended rule liberalizes daily catch or possession limits and gear types, and removes limits for game fish in Holbrook Reservoir from July 11 through December 31, 2014. These rule modifications will aid in reducing fish stocks prior to the reservoir becoming dry. This reservoir is used for irrigation but water levels are usually held high to maintain a fishery for stocked rainbow trout. This fishery was created through a Memorandum of Understanding (MOU) with the irrigator in 1981. The irrigator notified Oregon Department of Fish and Wildlife June 30, 2014, per MOU conditions, that he would likely use all of the water in the reservoir. This has only occurred three times over a 33 year span.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

## 635-021-0090

### Inclusions and Modifications

(1) **2014 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 **2014 Oregon Sport Fishing Regulations**.

(2) The Powder River is open to angling for spring Chinook salmon from Hughes Lane Bridge near Baker City upstream to Mason Dam beginning June 11 through September 1, 2014.

(a) The daily bag limit is two (2) adipose fin-clipped Chinook; two daily limits in possession.

(b) All other General, Statewide and Southeast Zone Regulations, as provided in the **2014 Oregon Sport Fishing Regulations**, remain in effect.

(3) Holbrook Reservoir (Lake County) is open to angling for all game fish species from July 11 through December 31, 2014 with the following restrictions:

(a) Allowed harvest methods are by hand, dip net, or angling;

(b) There are no daily catch and possession limits; and

(c) There are no minimum length requirements.

[Publications: Publications referenced are available from the agency.]

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 11-1-02 (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

# ADMINISTRATIVE RULES

**Rule Caption:** Columbia River Zone 6 Treaty Indian Summer Commercial Gill Net Fishery Authorized

**Adm. Order No.:** DFW 91-2014(Temp)

**Filed with Sec. of State:** 7-10-2014

**Certified to be Effective:** 7-14-14 thru 7-31-14

**Notice Publication Date:**

**Rules Amended:** 635-041-0076

**Rules Suspended:** 635-041-0076(T)

**Subject:** This amended rule authorizes the sales of fish caught in a Treaty tribal commercial gill net fishery set for all of Zone 6 of the Columbia River from 6:00 a.m. Monday, July 14 through 6:00 p.m. Friday, July 18 (4.5 days). Modifications are consistent with action taken July 9, 2014 by the Columbia River Compact, the Departments of Fish & Wildlife for the States of Oregon and Washington in cooperation with the Columbia River Treaty Tribes.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

## 635-041-0076

### Summer Salmon Season

(1) Salmon, steelhead, shad, walleye, catfish, bass, yellow perch, and carp may be taken for commercial purposes from Zone 6, in the Columbia River Treaty Indian Fishery, from 12:01 a.m. Monday, June 16 through 11:59 p.m. Thursday, July 31, 2014.

(2) Gear is restricted to subsistence fishing gear which includes hoop-nets, dipnets, and rod and reel with hook-and-line. Fish may also be taken by gill net during the following period(s): from 6:00 a.m. Monday, July 14 through 6:00 p.m. Friday, July 18, 2014 (4.5 days).

(3) Closed areas as set forth in OAR 635-041-0045 remain in effect with the exception of Spring Creek Hatchery sanctuary.

(4) White sturgeon between 43–54 inches in fork length caught in The Dalles Pool and John Day pools and white sturgeon between 38–54 inches in fork length caught in the Bonneville Pool may not be sold but may be retained for subsistence use. Fish caught during any open period may be sold at any time.

(5) For the period beginning 12:01 a.m. Monday, June 16 through 11:59 p.m. Thursday, July 31, 2014, commercial sales of salmon, steelhead, walleye, shad, catfish, carp, bass and yellow perch caught in Yakama Nation tributary fisheries in the Klickitat River; Wind River; and Drano Lake are allowed for Yakama Nation members during those days and hours when these tributaries are open under lawfully enacted Yakama Nation fishing periods. White sturgeon between 43–54 inches in fork length harvested in tributaries within The Dalles or John Day pools and white sturgeon between 38–54 inches in fork length harvested in tributaries within Bonneville Pool may not be sold but may be kept for subsistence purposes.

Stat. Auth.: ORS 496.118 & 506.119

Stats. Implemented: ORS 506.109, 506.129 & 507.030

Hist.: DFW 5-2006, f. & cert. ef. 2-15-06; DFW 39-2006(Temp), f. & cert. ef. 6-8-06 thru 7-31-06; DFW 46-2006(Temp), f. & cert. ef. 6-20-06 thru 7-31-06; DFW 49-2006(Temp), f. 6-26-06, cert. ef. 6-27-06 thru 7-31-06; DFW 56-2006(Temp), f. 6-30-06, cert. ef. 7-3-06 thru 7-31-06; DFW 58-2006(Temp), f. 7-6-06, cert. ef. 7-10-06 thru 7-31-06; Administrative correction 8-22-06; DFW 46-2007(Temp), f. 6-15-07, cert. ef. 6-16-07 thru 9-13-07; DFW 49-2007(Temp), f. 6-22-07, cert. ef. 6-26-07 thru 9-13-07; DFW 53-2007(Temp), f. & cert. ef. 7-6-07 thru 7-31-07; Administrative correction 9-16-07; DFW 45-2008(Temp), f. 5-2-08, cert. ef. 5-5-08 thru 7-31-08; DFW 47-2008(Temp), f. 5-9-08, cert. ef. 5-11-08 thru 7-31-08; DFW 62-2008(Temp), f. 6-13-08, cert. ef. 6-16-08 thru 8-31-08; 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; DFW 80-2008(Temp), f. & cert. ef. 7-10-08 thru 8-31-08; DFW 87-2008(Temp), f. & cert. ef. 7-25-08 thru 8-31-08; DFW 94-2008(Temp), f. & cert. ef. 8-14-08 thru 9-30-08; Administrative correction 10-21-08; DFW 50-2009(Temp), f. 5-14-09, cert. ef. 5-16-09 thru 7-31-09; DFW 56-2009(Temp), f. 5-26-09, cert. ef. 5-27-09 thru 7-31-09; DFW 71-2009(Temp), f. 6-15-09, cert. ef. 6-16-09 thru 7-31-09; DFW 76-2009(Temp), f. 6-26-09, cert. ef. 6-30-09 thru 7-31-09; DFW 82-2009(Temp), f. 7-6-09, cert. ef. 7-8-09 thru 7-31-09; DFW 84-2009(Temp), f. 7-13-09, cert. ef. 7-15-09 thru 7-31-09; Administrative correction 8-21-09; DFW 48-2010(Temp), f. 4-26-10, cert. ef. 4-27-10 thru 7-31-10; DFW 51-2010(Temp), f. & cert. ef. 4-29-10 thru 7-31-10; DFW 56-2010(Temp), f. 5-10-10, cert. ef. 5-11-10 thru 7-31-10; DFW 68-2010(Temp), f. 5-18-10, cert. ef. 5-19-10 thru 7-31-10; DFW 71-2010(Temp), f. 5-19-10, cert. ef. 5-21-10 thru 6-16-10; DFW 74-2010(Temp), f. & cert. ef. 6-2-10 thru 7-31-10; DFW 80-2010(Temp), f. 6-14-10, cert. ef. 6-16-10 thru 7-31-10; DFW 87-2010(Temp), f. 6-25-10, cert. ef. 6-29-10 thru 7-31-10; DFW 97-2010(Temp), f. 7-8-10, cert. ef. 7-13-10 thru 7-31-10; DFW 101-2010(Temp), f. 7-19-10, cert. ef. 7-20-10 thru 7-31-10; DFW 105-2010(Temp), f. 7-23-10, cert. ef. 7-26-10 thru 7-31-10; Administrative correction 8-18-10; DFW 43-2011(Temp), f. & cert. ef. 5-10-11 thru 10-31-11; DFW 66-2011(Temp), f. 6-14-11, cert. ef. 6-16-11 thru 10-31-11; DFW 75-2011(Temp), f. 6-24-11, cert. ef. 6-27-11 thru 10-31-11; DFW 84-2011(Temp), f. 7-1-11, cert. ef. 7-5-11 thru 10-31-11; DFW 88-2011(Temp), f. 7-8-11, cert. ef. 7-10-11 thru 10-31-11; DFW 94-2011(Temp), f. 7-14-11, cert. ef. 7-18-11 thru 10-31-11; DFW 98-2011(Temp), f. 7-20-11, cert. ef. 7-25-11 thru 10-31-11; Administrative correction, 11-18-11; DFW 66-2012(Temp), f. 6-14-12, cert. ef. 6-18-12 thru 7-31-12; DFW 81-2012(Temp), f. 6-29-12, cert. ef. 7-3-12 thru 8-31-12; [DFW 87-2012(Temp), f. 7-11-12, cert. ef. 7-12-12 thru 8-31-12; Temporary Suspended by DFW 94-2012(Temp), f. & cert. ef. 7-27-12 thru 10-31-12]; DFW 57-2013(Temp), f. 6-12-13, cert. ef. 6-16-13 thru 7-31-13; DFW 63-2013(Temp), f. 6-27-13, cert. ef. 6-29-13 thru 7-31-13; DFW 69-2013(Temp), f. 7-5-13, cert. ef. 7-6-13 thru 7-31-13; DFW 71-2013(Temp), f. 7-11-13, cert. ef. 7-15-13 thru 7-31-13; DFW 77-2013(Temp), f. 7-18-13, cert. ef. 7-22-13

thru 7-31-13; Administrative correction, 8-21-13; DFW 66-2014(Temp), f. 6-12-14, cert. ef. 6-16-14 thru 7-31-14; DFW 79-2014(Temp), f. 6-26-14, cert. ef. 6-30-14 thru 7-31-14; DFW 91-2014(Temp), f. 7-10-14, cert. ef. 7-14-14 thru 7-31-14

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**Rule Caption:** 2014 Columbia River Summer Recreational Fisheries Modified

**Adm. Order No.:** DFW 92-2014(Temp)

**Filed with Sec. of State:** 7-10-2014

**Certified to be Effective:** 7-11-14 thru 7-31-14

**Notice Publication Date:**

**Rules Amended:** 635-023-0128

**Rules Suspended:** 635-023-0128(T)

**Subject:** This amended rule modifies the ongoing 2014 summer recreational salmon fishing seasons in the Columbia River. Modifications to regulations conform to regulation changes developed through this year's Pacific Fishery Management Council/North of Falcon process. Rule modifications were made consistent with Joint State Action taken July 9, 2014, by the Columbia River Compact agencies of the Departments of Fish & Wildlife for the States of Oregon and Washington.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

## 635-023-0128

### Summer Sport Fishery

(1) The 2014 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 2014 Oregon Sport Fishing Regulations.

(2) Notwithstanding all other specifications and restrictions in the 2014 Oregon Sport Fishing Regulations:

(a) During the period from June 16 through July 31, 2014, the mainstem Columbia River is open to the retention of adipose fin-clipped jack Chinook (12–24 inches in length) and adipose fin-clipped steelhead from the Astoria-Megler Bridge upstream to the Oregon/Washington border.

(b) Retention of sockeye salmon and adipose fin-clipped adult summer Chinook (longer than 24 inches in length) is allowed:

(A) From the Astoria-Megler Bridge upstream to Bonneville Dam during the period from July 11 through July 31, 2014; and

(B) From Bonneville Dam upstream to the Oregon/Washington border during the period from June 16 through July 31, 2014.

(c) The combined daily bag limit for adult salmon and steelhead is two fish. All sockeye are considered adults in the daily limit. Only Chinook and steelhead which are adipose fin-clipped may be retained. The daily limit for jacks is five fish.

[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

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**Rule Caption:** Columbia River Mainstem Summer Commercial Drift Net Fisheries Authorized

**Adm. Order No.:** DFW 93-2014(Temp)

**Filed with Sec. of State:** 7-10-2014

**Certified to be Effective:** 7-14-14 thru 7-31-14

**Notice Publication Date:**

**Rules Amended:** 635-042-0027

# ADMINISTRATIVE RULES

## **Rules Suspended:** 635-042-0027(T)

**Subject:** This amended rule sets two non-Indian commercial summer salmon drift gill net periods for the mainstem Columbia River in Zones 1 through 5. The first period will commence at 7:00 p.m. Monday, July 14 and run through to 7:00 a.m. Tuesday, July 15, 2014 (12 hours); the second period will commence at 7:00 p.m. Monday, July 21 and run through to 7:00 a.m. Tuesday, July 22, 2014 (12 hours). Allowed sales from these fisheries include Chinook salmon, sockeye salmon, and shad. Rule modifications were made consistent with Joint State Action taken July 9, 2014, by the Columbia River Compact agencies of the Departments of Fish & Wildlife for the States of Oregon and Washington.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

## **635-042-0027**

### **Summer Salmon Season**

(1) Chinook salmon, sockeye salmon, and shad may be taken by drift gill net for commercial purposes in Zones 1 through 5, from 7:00 p.m. Monday, July 14 to 7:00 a.m. Tuesday, July 15, 2014 (12 hours); and from 7:00 p.m. Monday, July 21 to 7:00 a.m. Tuesday, July 22, 2014 (12 hours).

(2) It is *unlawful* to use a gill net having a mesh size less than 8 inches. Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

(3) Closed waters, as described in OAR 635-042-0005 for Cowlitz River, Kalama A, Lewis A, Washougal River and Sandy River sanctuaries are in effect during open fishing periods as applicable.

Stat. Auth.: ORS 496.118, 506.109 & 506.129  
Stats. Implemented: ORS 506.119 & 507.030

Hist.: DFW 5-2006, f. & cert. ef. 2-15-06; DFW 47-2006(Temp), f. 6-20-06, cert. ef. 6-26-06 thru 7-31-06; DFW 51-2006(Temp), f. & cert. ef. 6-29-06 thru 7-31-06; DFW 57-2006(Temp), f. 7-5-06, cert. ef. 7-6-06 thru 7-31-06; DFW 63-2006(Temp), f. 7-14-2006, cert. ef. 7-16-06 thru 7-31-06; DFW 68-2006(Temp), f. 7-28-06, cert. ef. 7-30-06 thru 7-31-06; Administrative correction 8-22-06; DFW 45-2007(Temp), f. 6-15-07, cert. ef. 6-25-07 thru 7-31-07; DFW 52-2007(Temp), f. & cert. ef. 7-6-07 thru 7-31-07; DFW 63-2008(Temp), f. 6-13-08, cert. ef. 6-24-08 thru 7-31-08; DFW 68-2008(Temp), f. 6-20-08, cert. ef. 6-21-08 thru 8-31-08; DFW 75-2008(Temp), f. 7-3-08, cert. ef. 7-7-08 thru 7-31-08; Administrative correction 8-21-08; DFW 72-2009(Temp), f. 6-15-09, cert. ef. 6-18-09 thru 7-31-09; Administrative correction 8-21-09; DFW 81-2010(Temp), f. 6-14-10, cert. ef. 6-17-10 thru 7-31-10; Administrative correction 8-18-10; DFW 67-2011(Temp), f. 6-14-11, cert. ef. 6-16-11 thru 7-31-11; Administrative correction 9-23-11; DFW 67-2012(Temp), f. 6-14-12, cert. ef. 6-17-12 thru 7-31-12; Administrative correction, 8-27-12; DFW 56-2013(Temp), f. 6-12-13, cert. ef. 6-16-13 thru 7-31-13; DFW 72-2013(Temp), f. 7-11-13, cert. ef. 7-15-13 thru 7-31-13; Administrative correction, 8-21-13; DFW 67-2014(Temp), f. 6-12-14, cert. ef. 6-16-14 thru 7-31-14; DFW 84-2014(Temp), f. 7-2-14, cert. ef. 7-7-14 thru 7-31-14; DFW 93-2014(Temp), f. 7-10-14, cert. ef. 7-14-14 thru 7-31-14

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**Rule Caption:** Housekeeping Corrections to Recreational Sturgeon Fishery Rules for the Columbia River

**Adm. Order No.:** DFW 94-2014(Temp)

**Filed with Sec. of State:** 7-14-2014

**Certified to be Effective:** 7-14-14 thru 12-31-14

**Notice Publication Date:**

**Rules Amended:** 635-023-0095

**Rules Suspended:** 635-023-0095(T), 635-041-0061(T)

**Subject:** This amended rule contains modifications in keeping with guidance from the Office of the Legislative Counsel in the use of the term “effective” within the body of the rule to describe beginning dates of fishing periods or seasons. Where appearing, the phrase “effective on” was replaced with the phrase “during the period from.” And, where an end date for a fishery has not yet been determined the phrase “until further notice” was used. Revisions are consistent with an email received from Maureen McGee, Deputy Legislative Counsel with the Office of the Legislative Counsel.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

## **635-023-0095**

### **Sturgeon Season**

(1) The **2014 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 **2014 Oregon Sport Fishing Regulations**.

(2) During the period from 12:01 a.m. Saturday, June 14, 2014 until further notice, the John Day Pool and adjacent tributaries are closed to retention of white sturgeon.

(3) Retention of white sturgeon between 38–54 inches in fork length is allowed Friday July 11, Saturday July 12, Friday July 18, and Saturday July 19, 2014 (4 days) in the mainstem Columbia River from Bonneville Dam upstream to The Dalles Dam (Bonneville Pool) including adjacent tributaries.

(4) During the period from 12:01 a.m. Friday, August 1, 2014 until further notice, The Dalles Pool and adjacent tributaries are closed to retention of white sturgeon.

(5) During the period from January 1, 2014 until further notice, the annual bag limit for white sturgeon is two (2) fish.

(6) Angling for sturgeon is prohibited from:

(a) Bonneville Dam downstream 9 miles to a line crossing the Columbia River from Navigation Marker 82 on the Oregon shore westerly to a boundary marker on the Washington shore upstream of Fir Point from May 1 through August 31;

(b) Highway 395 Bridge upstream to McNary Dam;

(c) From the west end of the grain silo at Rufus upstream to John Day Dam during May 1 through July 31;

(d) From the Dalles Dam downstream 1.8 miles to the east (upstream) dock at the Port of The Dalles boat ramp on the the Oregon shore straight across to a marker on the Washington shore from May 1 through July 31, 2014; and

(e) The upper and lower ends of Sand Island and corresponding markers on the Oregon shoreline (slough at Rooster Rock State Park) from January 1 through April 30.

(7) The mainstem Columbia River from McNary Dam upstream to the Oregon-Washington border at river mile 309.5 is open to retention of white sturgeon with a fork length of 43–54 inches, seven days per week from February 1 through July 31.

(8) Retention of green sturgeon is prohibited all year in all areas.

(9) Catch-and-release angling is allowed year-round except as described above in sections (6)(a) through (6)(e).

(10) During the period from January 1, 2014 until further notice, the mainstem Columbia River from the mouth at Buoy 10 upstream to Bonneville including Oregon tributaries upstream to the mainline railroad bridges, is closed to the retention of white sturgeon.

Stat. Auth.: ORS 496.118, 506.109 & 506.129

Stats. Implemented: ORS 506.119 & 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. 2-11-11 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

# ADMINISTRATIVE RULES

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

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## Department of Forestry Chapter 629

**Rule Caption:** Oregon Smoke Management Plan Revision and Update

**Adm. Order No.:** DOF 2-2014

**Filed with Sec. of State:** 7-11-2014

**Certified to be Effective:** 7-11-14

**Notice Publication Date:** 2-1-2014

**Rules Amended:** 629-048-0001, 629-048-0005, 629-048-0130, 629-048-0200, 629-048-0210, 629-048-0230, 629-048-0310, 629-048-0450, 629-048-0500

**Subject:** This rule and the Smoke Management Plan is administered to manage prescribed burning on private, federal and other public land to protect air quality and maintain forest productivity and health. Changes to the rule include some housekeeping measures such as updating and adding new definitions, adding reference material related to burning alternatives, and adding another rule reference for smoke management compliance; fixing some inadvertent changes made during the last review such as regulating prescribed burning outside district boundaries, including a five-year review of the entire plan, and moving back burn plan deadlines to the day of the burn; and minor changes such as adding monitoring to large tonnage burns and clarifying fees for multiple burn types.

**Rules Coordinator:** Sabrina Perez—(503) 945-7210

### 629-048-0001

#### Title, Scope and Effective Dates

(1) OAR 629-048-0001 through 629-048-0500 are known as the Smoke Management rules.

(2) The Smoke Management rules apply to prescribed burning of forest fuels for forest management purposes within any forest protection district in Oregon as described by OAR 629-041-0500 to 629-041-0575. In addition, the rules apply to forestland outside any forest protection district in Oregon as described by ORS 527.620(7) at the discretion of the Oregon Department of Forestry and Department of Environmental Quality defined in a joint agreement.

(3) The Smoke Management rules are effective July 1, 2014.

Stat. Auth: ORS 477.013, 477.562, 526.016 & 526.041

Stats. Implemented: ORS 477.013, 477.515 & 477.562

Hist.: DOF 4-2007, f. 12-31-07, cert. ef. 1-1-08; DOF 2-2014, f. & cert. ef. 7-11-14

### 629-048-0005

#### Definitions

Unless otherwise defined below, terms used in this rule division shall have the meaning provided in ORS 477.001:

(1) "Alternatives to burning" means any forest management activity that reduces the volume of material, rather than actually being burned.

(2) "Board" means the State Board of Forestry.

(3) "Burn boss" means the person, authorized by the owner (may include the owner) or a federal land management agency to conduct and make decisions regarding the practices involved in conducting a prescribed burning operation and who is responsible for compliance with all requirements under this rule division and related laws.

(4) "Burn registration" means the act or product of notifying the forester to the required level of detail, of intent to conduct a prescribed burning operation as required by OAR 629-048-0300.

(5) "Class I Area" means national parks and certain wilderness areas designated by Congress in 1977 as federal Class I Areas that are subject to visibility protection under the Environmental Protection Agency's Regional Haze Rule and the federal Clean Air Act. Class I Areas in Oregon include: Crater Lake National Park, Diamond Peak Wilderness, Eagle Cap Wilderness, Gearhart Mountain Wilderness, Hells Canyon Wilderness, Kalmiopsis Wilderness, Mountain Lakes Wilderness, Mount Hood Wilderness, Mount Jefferson Wilderness, Mount Washington Wilderness, Strawberry Mountain Wilderness and Three Sisters Wilderness.

(6) "Class 1 forestland" has the same meaning as given in ORS 526.324 to "timber class" and includes all forestland primarily suitable for the production of timber.

(7) "Class 2 forestland" has the same meaning as given in ORS 526.324 to "timber and grazing class" and includes all forestland primarily suitable for joint use for timber production and the grazing of livestock, as a permanent or semi-permanent joint use, or as a temporary joint use during the interim between logging and reforestation.

(8) "Class 3 forestland" has the same meaning as given in ORS 526.324 to "agricultural class" and includes all forestland primarily suitable for grazing or other agricultural use.

(9) "Department" means the State Forestry Department.

(10) "Eastern Oregon" means the eighteen Oregon counties lying east of Multnomah, Clackamas, Marion, Linn, Lane, Douglas, and Jackson Counties.

(11) "Emission reduction technique" means any forest management activity that allows for a lower volume of particulate to be produced from a given volume of burning.

(12) "Emissions" means the gaseous and particulate combustion products in smoke resulting from burning forest fuels.

(13) "Federal land management agency" means the United States Department of Agriculture's Forest Service; the United States Department of the Interior's Bureau of Land Management, National Park Service, Fish and Wildlife Service, or Bureau of Indian Affairs; or any other federal agency that may conduct prescribed burning within a forest protection district.

(14) "Field administrator" means an employee of the State Forestry Department, a forest protective association, or federal land management agency who has, among other responsibilities, an official role in determining whether a prescribed burn should proceed, continue or be suspended.

(15) "Forester" means the State Forester or authorized representative including but not limited to fire wardens appointed under ORS 477.355.

(16) "Forest fuels" means any flammable woody material, grass or other plant matter that may constitute a wildfire hazard or that is intended for disposal by prescribed burning, but does not include products that have had secondary processing such as boards, posts or paper.

(17) "Forest protection district" means an area of forestland designated by the State Forester for protection from fire pursuant to ORS 477.225. Detailed descriptions of the forest protection districts may be found in OAR 629-041-0500 to 629-041-0575.

(18) "Ground level" means at or close to the surface of the earth such that smoke at "ground level" could be inhaled by persons going about their normal business, in or out of doors. It does not include smoke that passes overhead when prescribed burning is conducted in accordance with the Smoke Management forecast and instructions.

(19) "Level 1 regulation" means the program of requirements that apply to all forestland managed by a federal land management agency statewide, and all Class 1 forestland in western Oregon within a forest protection district (OAR 629-048-0100(2)). These requirements include burn registration at least seven days in advance (629-048-0300), fee administration (629-048-0310), compliance with Smoke Management forecast instructions (629-048-0230), and reporting of accomplishments (629-048-0320).

(20) "Level 2 regulation" means the program of requirements that apply to all non-federal forestlands in eastern Oregon, and all Class 3 forestland in western Oregon within a forest protection district (OAR 629-048-0100(3)). These requirements include burn registration (629-048-0300) and reporting of accomplishments (629-048-0320).

(21) "Mop-up" means action, usually involving the application of water or other means to eliminate heat, remove fuel or reduce the supply of oxygen, sufficient to make a fire safe or reduce residual smoke.

(22) "Other areas sensitive to smoke" means specific recreation areas not listed as SSRAs in OAR 629-048-0140 but that are intended to receive consideration for focused forecasting attention for limited times during periods of heavy use by the public such as coastal beaches on holidays and other areas during special events.

(23) "Prescribed burning" means the use of fire ignited as a planned management activity on forestland to meet specific objectives involving the reduction or removal of forest fuels. Prescribed burning does not include impromptu fires ignited for purposes such as warming fires, burn-out or backfire operations used in wildfire suppression, or lightning ignited "wildland fire use" as practiced by federal land management agencies.

(24) "Regional haze" means air pollution transported over long distances into Class I Areas that reduces visibility in those areas.

# ADMINISTRATIVE RULES

(25) "Residual smoke" means smoke produced after the initial fire has passed through the fuel.

(26) "Smoke intrusion" means the verified entrance of smoke from prescribed burning into a Smoke Sensitive Receptor Area at ground level.

(27) "Smoke Management forecast unit" means any or all of the persons appointed or assigned by the State Forester to develop and interpret weather forecasts and produce Smoke Management instructions, usually operating from the department headquarters in Salem.

(28) "Smoke Sensitive Receptor Area or SSRA" means an area designated for the highest level of protection under the Smoke Management Plan, as described and listed in OAR 629-048-0140.

(29) "Underburning" means low intensity prescribed burning to maintain forest health through reduction of fuels in the understory of a forest stand while maintaining the overstory stand characteristics.

(30) "Verified smoke incident" means an entrance of prescribed burning smoke into a community, other than an SSRA, investigated by the forester to:

(a) Validate claims that smoke did, in fact, enter the area described, at ground level;

(b) Determine if the smoke or a portion of it, in fact, derived from forest management prescribed burning from a legally conducted operation; and

(c) If (a) and (b) of this section were affirmed, determine the intensity and approximate duration of the smoke incident as described in OAR 629-048-0110.

(31) "Western Oregon" means the eighteen Oregon counties lying west of Hood River, Wasco, Jefferson, Deschutes and Klamath Counties.

Stat. Auth: ORS 477.013, 477.562, 526.016 & 526.041

Stats. Implemented: ORS 477.013, 477.515 & 477.562

Hist.: DOF 4-2007, f. 12-31-07, cert. ef. 1-1-08; DOF 2-2014, f. & cert. ef. 7-11-14

## 629-048-0130

### Visibility Objectives

(1) It is the intent under the Smoke Management Plan to comply with the Oregon Visibility Protection Plan (OAR 340-200-0040, Section 5.2).

(2) It is the intent under the Smoke Management Plan to operate in a manner consistent with the Oregon Regional Haze Plan, including the Enhanced Smoke Management Program (ESMP) criteria contained in the plan, for the purpose of protecting Class I Area visibility. These ESMP criteria include:

- (a) Actions to minimize emissions;
- (b) Evaluation of smoke dispersion;
- (c) Alternatives to fire;
- (d) Public notification;
- (e) Air quality monitoring;
- (f) Surveillance and enforcement;
- (g) Program evaluation;
- (h) Burn authorization; and
- (i) Regional coordination.

(3) When prescribed burning is conducted outside any Class I Area, an objective of the Smoke Management Plan is to minimize any smoke that impairs visibility inside the Class I Area. In addition to compliance with Smoke Management instructions issued in the daily forecast and compliance with all conditions of the burn permit required under ORS 477.515, burn bosses and field administrators are encouraged to closely observe local conditions at the burn site to avoid the main smoke plume entering a Class I Area at ground level.

(4) When prescribed burning is conducted inside a Class I Area, the Smoke Management Plan objective is to use best practices along with tight parameters for burn site conditions that will vent the main smoke plume up and out of the Class I Area and minimize residual smoke.

Stat. Auth: ORS 477.013, 477.562, 526.016 & 526.041

Stats. Implemented: ORS 477.013, 477.515 & 477.562

Hist.: DOF 4-2007, f. 12-31-07, cert. ef. 1-1-08; DOF 2-2014, f. & cert. ef. 7-11-14

## 629-048-0200

### Alternatives to Burning

(1) When planning forest management prescriptions and particularly final harvests (prior to reforestation), owners are encouraged to use practices that will eliminate or significantly reduce the volume of prescribed burning necessary to meet their management objectives. Some practices to consider include, but are not limited to:

(a) Maximizing the cost-effective use of woody material for manufacture of products;

(b) Where cost-effective, using wood or other biomass for energy production or mulch;

(c) Lopping and scattering limbs and other woody material, or operating heavy machinery over the wood to maximize contact with the soil in order to speed its breakdown; or

(d) Re-arranging woody materials, as necessary to accomplish reforestation through the slash (from a fire prevention standpoint, this may not be desirable in areas of heavy fuel concentrations or where soil moistures are not conducive to breakdown of fuels).

(2) When prescribed burning is determined to be necessary to achieve forest management objectives, owners are encouraged to use emission reduction techniques as described in OAR 629-048-0210.

(3) Prior to registration, forestland managers are strongly encouraged to consult the following:

(a) "Non-burning Alternatives to Prescribed Fire on Wildlands in the Western United States" at <http://www.wrrepair.org/forums/fejftasks/FEJFtask3.html> (Western Regional Air Partnership, February, 2004);

(b) The Oregon Forest Industry Directory website provides information on potential markets for woody material at [www.orforestdirectory.com/](http://www.orforestdirectory.com/); and

(c) "Oregon Forest Biomass Estimate by County" by Phillip S. Cook and Jay O'Laughlin (Western Governors' Association, January 24, 2011), on the Woody Biomass Utilization Database at Oregon Department of Energy's website: [www.oregon.gov/energy/RENEW/Biomass/Pages/Bioenergy\\_map.aspx](http://www.oregon.gov/energy/RENEW/Biomass/Pages/Bioenergy_map.aspx)

(4) As described in 629-048-0450(2)(c), the department shall complete an annual report summarizing the use of alternatives to burning.

Stat. Auth: ORS 477.013, 477.562, 526.016 & 526.041

Stats. Implemented: ORS 477.013, 477.515 & 477.562

Hist.: DOF 4-2007, f. 12-31-07, cert. ef. 1-1-08; DOF 2-2014, f. & cert. ef. 7-11-14

## 629-048-0210

### Best Burn Practices; Emission Reduction Techniques

(1) "Best burn practices" as used in this rule refers to those practices designed to minimize emissions from prescribed burning or accomplish burning at times and under such conditions as to minimize the likelihood that emissions will have adverse effects to the air quality maintenance or visibility objectives (OAR 629-048-0120 and 629-048-0130). Additional practices not described in this rule may be necessary to ensure against the escape of fire or protection of forest resources.

(2) In general, best burn practices involve methods that ensure the most rapid and complete combustion of forest fuels while nearby, "non-target" fuels are prevented from burning, such as:

(a) Physical separation of "target" and "non-target" fuels;

(b) Burn prescriptions, particularly for broadcast burns, that recognize and utilize the natural differences in fuel moistures of larger and smaller pieces of woody material; or

(c) Covering of piles sufficient to facilitate ignition and complete combustion, and then burning them at times of the year when all other fuels are damp, when it is raining or there is snow on the ground.

(3) Rapid combustion is well served by rapid ignition which may involve the use of petroleum accelerants (with appropriate safety precautions) and by maintaining an adequate air supply to the forest fuels being burned. Piles and windrows should be mostly free of soil, rocks and other non-combustible materials and should be loosely stacked to promote aeration. Where practicable, re-stacking or "feeding" the burn pile is encouraged to complete combustion and avoid smoldering.

(4) When piles are covered as a best burn practice and the covers are to be removed before burning, any effective materials may be used, as long as they are removed for re-use or properly disposed of. When covers will not be removed and thus will be burned along with the piled forest fuels, the covers must not consist of materials prohibited under OAR 340-264-0060(3), except that polyethylene sheeting that complies with the following may be used:

(a) Only polyethylene may be used. All other plastics are prohibited;

(b) The size of each polyethylene cover must not exceed 100 square feet. For small piles, covering only an area necessary to achieve rapid ignition and combustion, instead of the entire pile, is encouraged;

(c) The thickness of the polyethylene cover must not exceed 4 mil; and

(d) Layering or multiple covers (exceeding 100 square feet combined) within a pile is prohibited, unless authorized in writing by the forester to meet ignition and combustion needs.

(5) The use of petroleum accelerants and polyethylene covers as "best burn practices" described in this rule is expressly intended as an exception to OAR 340-264-0060(3) as allowed by 340-264-0060.

(6) In general, rapid mop-up of prescribed burning is not needed to meet the objectives of the prescribed burn and protect air quality, however,

# ADMINISTRATIVE RULES

in instances of prescribed burning within an SSRA or when conditions change significantly from those forecasted or present at the time of ignition, rapid mop-up may become necessary to prevent excessive residual smoke or entry of smoke into an SSRA or other area sensitive to smoke. Burn plans required under OAR 629-043-0026(4), prescribed fire plans required by federal land management agency policy, or burn permits required under ORS 477.515, when appropriate, should address conditions that may require mop-up of the prescribed burn and to what extent.

(7) When local conditions for smoke dispersal appear to be better than forecasted, burn bosses and field administrators are encouraged to communicate such information to the Smoke Management forecast unit, to further the objective of accomplishing burning during the most favorable conditions.

(8) As described in 629-048-0450(2)(c), the department shall complete an annual report summarizing the use of emission reduction techniques.

Stat. Auth.: ORS 477.013, 477.562, 526.016 & 526.041

Stats. Implemented: ORS 477.013, 477.515 & 477.562

Hist.: DOF 4-2007, f. 12-31-07, cert. ef. 1-1-08; DOF 2-2014, f. & cert. ef. 7-11-14

## 629-048-0230

### Burn Procedures

(1) Before any prescribed burning is initiated, burn bosses should have a well thought out plan that takes into account:

(a) How weather will be monitored and changes in conditions will be communicated;

(b) Resources necessary to accomplish ignition and ignition sequences;

(c) Resources and methodology necessary to contain and control the fire and prevent its escape, including communications to access additional resources, if necessary; and

(d) How the burn will be conducted to avoid smoke entering SSRAs or other areas sensitive to smoke and to minimize smoke effects on other communities.

(2) The forester may require that a written burn plan be prepared for approval under OAR 629-043-0026(4), prior to issuance of a burn permit. A prescribed fire plan is required under federal policy for all prescribed burning on federal lands.

(3) Prescribed burn operations with large tonnages (2000 tons or more) or burns that will occur over multiple days should be adequately planned and monitored to provide opportunities to cease lighting and hold the existing burn within smaller compartments to mitigate undesirable smoke effects or changes in the actual burn conditions from those that were forecasted.

(4) For prescription burn units on forestland subject to Level 1 regulation, burn bosses must provide specific information to be transmitted to the Smoke Management forecast unit in a standard format acceptable to the forester, regarding unit location, method of burning, and fuel loading tonnages by the day of the burn. If additional burning is deemed possible after 10:00 a.m. in consultation with the forecast unit, the plan deadline may be extended.

(5)(a) Before ignition of any prescribed burning in a fire season (as designated by the forester under ORS 477.505), the burn boss must obtain a permit to burn from the forester as required by 477.515 (not required for federal land management agencies). Federal land management agencies must follow agency policies that provide for an affirmative “go-no go decision” before ignition of any prescribed burning as documented and approved by the federal land management agency’s line officer.

(b) A permit to burn from the forester is also required for all prescribed burning on non-federal Class 1 forestland in western Oregon at any time of the year.

(c) Under ORS 477.515(1)(a), the forester may waive the requirement for a burn permit in instances of burning other than described in subsections (a) and (b) of this section, so burn bosses should check with the forester locally to determine whether permits are required outside fire season.

(6) Before ignition of any prescribed burning on forestland subject to Level 1 regulation, the burn boss must obtain the current Smoke Management forecast and instructions and must conduct the burning in compliance with the instructions. Burn bosses must make provisions to be informed if the forecast or instructions are subsequently changed. Through communication among the burn boss, field administrator and the Smoke Management forecast unit, based on information specifically relevant to the burn location, a burn boss may obtain a variance from the instructions, but must document the time and method of communication and adhere strictly to the conditions of the variance.

(7) For prescribed burn operations with large tonnages (greater than 2000 tons) or burns that will occur over multiple days, burn bosses may request at least two days in advance that a special forecast and instructions be issued to ensure adequate attention to meeting Smoke Management Plan objectives. Issuance of a special forecast and instructions will be solely within the discretion of the Smoke Management forecast unit based on workload and sufficient local information to support the forecast.

(8) The Smoke Management forecast unit, in developing instructions, and each field administrator issuing burn permits are directed to manage the prescribed burning on forest land in connection with the management of other aspects of the environment in order to maintain a satisfactory atmospheric environment in SSRAs. This direction is to be applied to situations in which prescribed burning may impact SSRAs or other areas sensitive to smoke.

(9) Each burn boss or field administrator must validate that forecasted weather conditions are consistent with actual on-site conditions prior to ignition of burns.

(10) A burn boss is required to terminate ignition, in a manner that does not compromise worker safety or the ability to prevent escape of the burn, if either of the following occurs:

(a) The burn boss determines, or is advised by a field administrator, that an SSRA, or other area sensitive to smoke is already adversely affected by the burn or would likely become so with additional burning; or

(b) The burn boss receives notice from the forester, through the Smoke Management forecast unit, or following consultation with the Department of Environmental Quality, that air in the entire state or portion thereof is, or would likely become adversely affected by smoke.

(11) Upon termination of ignition required by section (10) of this rule, any burning already under way should be completed, residual burning should be extinguished as soon as practicable, and no additional burning may be attempted until approval has been received from the forester.

Stat. Auth.: ORS 477.013, 477.562, 526.016 & 526.041

Stats. Implemented: ORS 477.013, 477.515 & 477.562

Hist.: DOF 4-2007, f. 12-31-07, cert. ef. 1-1-08; DOF 2-2014, f. & cert. ef. 7-11-14

## 629-048-0310

### Fees for Prescribed Burning

(1) Any prescribed burning on forestland subject to level 1 regulation (OAR 629-048-0100) requires payment of a non-refundable registration fee of \$.50/acre and upon accomplishment (see section (3) of this rule), a burn fee as further described in sections (2), (3), (5), (6) and (8) below.

(2) Burn fees for all forms of prescribed burning, including but not limited to, broadcast burning and burning of piles (whether in-unit, on landings, or from rights-of-way) shall be assessed (where required) against the total acres in the unit from which the forest fuels were accumulated, as described in the burn registration.

(3) The first time that fire is applied to a prescribed burn unit, regardless of actual accomplishment, payment of a burn fee is required. Burn fees shall be charged according to the following schedule:

(a) If the registration of planned burning includes only landing or right-of-way piles, the burn fee shall be \$.50 per acre registered. Subsequent attempts to improve accomplishment only in landing or right-of-way piles in the same unit, in the same calendar year or the two following calendar years, shall not incur additional fees.

(b) If the registration of planned burning includes other than landing or right-of-way piles, the burn fee shall be \$3.10 per acre registered. Subsequent attempts to improve accomplishment in any portion of the same unit, in the same calendar year or the two following calendar years, shall not incur additional fees.

(c) If the registration of planned burning includes any combination of burn treatments that include landing or right-of-way piles with broadcast or in-unit pile burning, the burn fee shall be \$2.60 per acre for each in-unit treatment registered upon the first attempt of each treatment. Landing or right-of-way piles will be \$.50 per acre registered upon the first attempt of burning any of those piles. Subsequent attempts to improve accomplishment in any portion of the same unit, in the same calendar year or the two following calendar years, shall not incur additional fees.

(4)(a) As used in this rule, “landing” means any location logs are yarded to for processing (trimming ends or limbs and tops remaining after yarding) and assembling for forwarding or loading onto trucks, including each loading site that may occur along a road. Consequently, a landing pile contains only those residues resulting from the processing, and not additional forest fuels accumulated from growth on the site or the felling process.

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(b) As used in this rule, “right-of-way piles” means any accumulated forest fuels that come only from the area cleared in the pioneering stage of road construction after appropriate utilization.

(5) Areas burned as a result of escaped fires that are outside the description of the registered burn area shall not be assessed fees if the fire outside of the described area is immediately attacked for wildfire suppression. If the fire outside of the described area is managed as a prescribed fire then every additional acre burned shall incur a registration fee of \$.50 per acre and a burn fee of \$3.10 per acre.

(6) Notwithstanding section (3) of this rule, forest health maintenance burning on forestland subject to Level 1 regulation, where significant fuel reduction has been accomplished through underburning within the last five years and where there are no piled forest fuels on the site, shall be charged a burn fee of \$.50 per acre.

(7) The forester shall prepare monthly billings to collect the appropriate registration and burn fees from the operator, federal land manager, landowner or timber owner whose name is recorded on the registration form for billing purposes.

(8) Notwithstanding sections (1) and (3) of this rule, each burn unit requires a minimum combined registration and burn fee of \$30.00. To reduce processing costs, the forester may elect to collect both registration and burn fees prior to accomplishment, for units less than 20 acres on one combined billing.

(9) Notwithstanding sections (1), (3) and (7) of this rule, in accordance with ORS 477.562(6), a federal land management agency may enter into a cooperative agreement with the forester for payment of registration and burn fees at an annual flat rate. The rate shall be based on estimated acres to be treated as a percentage of total acres on all ownerships, applied against the overall annual estimated operating cost of the Smoke Management Plan. Any such agreement shall have a provision that allows for periodic adjustment of the rate based on actual experience.

(10) Notwithstanding section (7) of this rule, any person or entity described in ORS 477.406(1) with a prior record of timely payment may, at the discretion of the forester, enter into a cooperative agreement for the efficient administration and payment of registration and burn fees provided all payments equal no less than the registration rate described in section (1) of this rule times the number of acres registered plus the burn fee rate in sections (3) or (6) of this rule, as appropriate, times the number of acres accomplished.

Stat. Auth: ORS 477.013, 477.562, 526.016 & 526.041  
Stats. Implemented: ORS 477.013, 477.515 & 477.562  
Hist.: DOF 4-2007, f. 12-31-07, cert. ef. 1-1-08; DOF 2-2014, f. & cert. ef. 7-11-14

## 629-048-0450

### Periodic Evaluation and Adaptive Management

(1) The department is responsible for analysis and evaluation of the prescribed burning operations conducted under the Smoke Management Plan.

(2) Reports summarizing annual activities of the program shall be published by the department addressing:

- (a) The level of burning activity;
- (b) Results with regard to avoiding entrance of smoke into SSRAs and other areas sensitive to smoke and reports of any smoke intrusions;
- (c) Accomplishment of alternatives to burning and the use of emission reduction techniques;
- (d) Evaluation of overall Smoke Management Plan accomplishment;
- (e) Evaluation of adequacy of listed SSRAs and protection measures;
- (f) Any other pertinent information related to Smoke Management Plan evaluation and improvement; and
- (g) Revenues generated from burn fees and related Smoke Management Plan costs.

(3) Copies of the reports described in section (2) of this rule will be made available to all interested parties.

(4) Upon publication of a report in accordance with section (2) of this rule, the forester will consult at least annually with the Smoke Management Advisory Committee created under ORS 477.556. Topics will include, but are not limited to, Smoke Management Plan implementation, status of the Oregon Forest Smoke Management Account (477.560), and any fee changes that may be appropriate based on the balance in this account.

(5) The Department of Forestry and the Department of Environmental Quality will jointly review the Smoke Management Plan every five years unless there is agreement by both agencies that the plan can be reviewed at an earlier or later date, not to exceed 10 years from the previous review. Results of the review will be presented to the State Forester and the Director of Environmental Quality for joint consideration and approval.

Representatives of affected agencies may assist the review at the discretion of the State Forester.

Stat. Auth: ORS 477.013, 477.562, 526.016 & 526.041  
Stats. Implemented: ORS 477.013, 477.515 & 477.562  
Hist.: DOF 4-2007, f. 12-31-07, cert. ef. 1-1-08; DOF 2-2014, f. & cert. ef. 7-11-14

## 629-048-0500

### Enforcement

(1) Violations of the Smoke Management Plan may be enforced either as violations of the fire prevention statutes and rules (ORS 477.980 to 477.993) or as violations of the forest practice rules (ORS 527.680 to 527.690, 527.990 to 527.992 and OAR 629-670).

(2)(a) When, in the judgment of the forester, a violation is related primarily to an act or omission that has caused or might cause fire to burn uncontrolled, enforcement under the provisions of the fire prevention statutes and rules is appropriate.

(b) When, in the judgment of the forester, a violation is related primarily to an act or omission that has caused or might cause deterioration of air quality, enforcement under the provisions of the Forest Practices Act and rules (specifically, OAR 629-615-0300) is appropriate.

(3) Enforceable standards within the Smoke Management Plan include requirements to:

- (a) Register burns prior to ignition (OAR 629-048-0230(4) and 629-048-0300);
- (b) Obtain approval for and follow a burn plan (OAR 629-048-0230(2) and 629-043-0026(4));
- (c) Obtain a burn permit and comply with any conditions included therein (OAR 629-048-0230(5) and ORS 477.515);
- (d) Obtain and comply with daily Smoke Management instructions and updates (OAR 629-048-0230(6));
- (e) Comply with restrictions regarding use of polyethylene covers on burn piles (OAR 629-048-0210(4));
- (f) Cease burning when directed by the forester (OAR 629-048-0100(4) and 629-048-0230(10));
- (g) Report accomplishments (OAR 629-048-0320); and
- (h) Pay fees (OAR 629-048-0310).

(4) Section 118 of the federal Clean Air Act provides for enforcement of state air quality regulations against federal agencies. It will be the policy of the Board of Forestry, in the event of a failure of a federal land management agency to comply with the Smoke Management Plan, that the forester will first inform the responsible agency of the failure and coordinate efforts to ensure timely correction of any breakdowns in procedure that may have resulted in the failure. However, if this method does not appear in the judgment of the State Forester to result in necessary correction of procedures, or under other circumstances that in the judgment of the State Forester warrant further action, enforcement action may be taken as with any other responsible party.

Stat. Auth: ORS 477.013, 477.562, 526.016 & 526.041  
Stats. Implemented: ORS 477.013, 477.515 & 477.562  
Hist.: DOF 4-2007, f. 12-31-07, cert. ef. 1-1-08; DOF 2-2014, f. & cert. ef. 7-11-14

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

**Rule Caption:** Behavior Support Services

**Adm. Order No.:** APD 17-2014

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**Subject:** The Department of Human Services (Department) is proposing to adopt rules for Behavior Support Services in OAR chapter 411, division 46 to establish standards to provide Behavior Support Services to individuals who receive Medicaid funded home and community-based services.

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# ADMINISTRATIVE RULES

## 411-046-0100

### Purpose

(1) The rules in OAR chapter 411, division 46 establish standards and procedures for Medicaid Behavior Support Services. Behavior Support Services are provided to support a wide range of individuals who receive Medicaid funded home and community-based care services. The scope of these rules cover:

(a) Department contractors of Behavior Support Services;

(b) Licensed assisted living, residential, and adult foster home providers who provide Behavior Support interventions Services to eligible individuals who receive Behavior Support Services;

(c) In-home agencies, specialized living, or homecare workers who provide Behavior Support interventions to eligible individuals who receive Behavior Support Services.

(2) Behavior Support Services are provided by a behavior consultant who provides eligible individuals and their caregivers with:

(a) A Behavior Support Plan;

(b) Ideas and strategies to support an individualized Activity Plan; and

(c) Coaching for designated caregivers on behavior and activity strategies.

(3) The goals of Behavior Support Services are to:

(a) Ensure all individuals eligible for State Plan K Community First Choice or Independent Choices receive behavior interventions in a person-centered manner that follows the behavior support standards described in these rules.

(b) Ensure individuals who have diagnoses that place them 'at risk' of negative behaviors receive proactive environmental strategies and activities which promote:

(A) Placement stability;

(B) Quality of life; and

(C) Autonomy and satisfaction with the individuals' caregivers.

(c) Provide caregivers with the environmental strategies and communication skills to revise and implement a Behavior Support Plan.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

Hist.: APD 17-2014, f. & cert. ef. 6-23-14

## 411-046-0110

### Definitions

Unless the context indicates otherwise, the following definitions apply to the rules in OAR chapter 411, division 046:

(1) "Abuse" means Abuse of an adult or elderly person as defined in ORS 124.050-095 and 430.735-430.765; and as defined in OAR 411-020-0002 for older adults and individuals with a physical disability who are 18 years of age or older.

(2) "Acquired brain injury or traumatic brain injury" means individuals who have or who are at risk of developing challenging behaviors as a result of a recent or longstanding brain injury diagnosis and who can benefit from Behavior Support Services. Acquired brain injury may include individuals with cognitive and behavioral disorders related to stroke, spinal cord injuries, or other neurological diseases that may benefit from Behavior Support Services.

(3) "Activation date" means service activation date as defined in these rules.

(4) "Activity evaluation" is part of the person-centered evaluation to determine what activities an individual enjoys doing.

(5) "Activity Plan" is part of the Behavior Support Plan and includes an activity list of the specific, private, group and community person-centered activities the individual finds meaningful or enjoys. The plan includes strategies to help caregivers ensure these activities become part of the individual's daily routine.

(6) "Adult foster home" means a licensed home providing services to a person who is eligible for or is receiving Behavior Support Services per OAR chapter 411, division 50.

(7) "Behavior consultants" are Medicaid providers who have a contract with the Department to provide Behavior Support Services. When Behavior Support Services are provided as part of a supplemental or specific needs contract, per OAR chapter 411, division 027, the behavior consultant is a designated employee, who meets the qualifications of a behavior consultant, and has a job description to provide Behavior Support Services.

(8) "Behavior interventions" mean any planned or repeated pattern of interventions or social interactions intended to modify an individual's environment or behavior.

(9) "Behavioral support" means the theories and evidenced-based practices supporting a proactive approach to behavioral intervention and that:

(a) Emphasize the development of functional alternative behavior;

(b) Prevent the need for, or minimize the use of, intrusive or restrictive interventions;

(c) Ensure abusive or demeaning interventions are never used; and

(d) Evaluate the effectiveness of behavior interventions based on objective data.

(10) "Behavior Support Interventions" means the caregiver's implementation of the Behavior Support Plan.

(11) "Behavior Support Plan" means the written document that describes individualized support strategies designed to make the individual's challenging behaviors irrelevant, inefficient or ineffective while reinforcing alternative behavior that achieves and satisfies the same need as the challenging behavior. The Behavior Support Plan will identify caregiver interventions to help caregivers deescalate, reduce, or tolerate challenging behavior when it occurs. The strategies focus on environmental, social, and physical factors that affect the behavior, while including supports for communication, personal choice, and specific preferences.

(12) "Behavior Support Services" mean a set of Medicaid funded services that include:

(a) Person-centered evaluation;

(b) A Behavior Support Plan;

(c) Coaching for designated caregivers on plan implementation;

(d) Monitoring to evaluate the plan's impact;

(e) Revision of the plan;

(f) Updating coaching and activities; and

(g) May include consultation with the caregiver on mitigating behaviors that place an individual's health and safety at risk and to prevent institutionalization.

(13) "Business day" means the days the "local office" is open.

(14) "Caregiver" means any person providing services to an eligible individual in a home and community-based care setting. Caregivers are designated by their employer to receive coaching from the behavior consultant.

(15) "Case manager" means a person employed by the Department or Area Agency on Aging who:

(a) Assesses the service needs of an applicant;

(b) Determines eligibility;

(c) Offers service choices to eligible individuals; and

(d) Authorizes referrals for a Behavior Support Service consultation, or placement in a program where Behavior Support interventions are provided, as part of the Medicaid supplemental or specific needs contracted service rate.

(16) "Coaching" means the direction provided by the behavior consultant to caregivers or designated caregivers on the Behavior Support and Activity Plans. Coaching includes:

(a) Demonstrations by the consultant;

(b) Observation or role play by caregivers on providing a specified intervention; and

(c) Feedback from caregivers on specified interventions.

(17) "Crisis management" means an individual:

(a) Has a medical or physical health need;

(b) Is exhibiting psychiatric symptoms or behaviors that necessitate emergency medical attention;

(c) Needs an immediate mental health intervention; or

(d) Needs hospitalization for physical health or psychiatric health reasons.

(18) "Dementia" means major neurocognitive disorders, listed in the Diagnostic and Statistical Manual of Mental Disorders (DSMV), which result in loss of cognitive function, interfere with an individual's daily functioning, and may affect an individual's language; memory; speech; movement; perception; and ability to think, learn, reason or follow social norms. Symptoms may include changes in personality, mood, and behavior.

(19) "Department" means the Department of Human Services or the Department's designee.

(20) "Designated caregivers" means the employees of a home or community-based care contractor, who are assigned to assist the behavior consultant with gathering information, review of the Behavior Plans, and are the recipients of coaching activities. The person responsible for coordination of services provided to an individual residing in their own home, under OAR chapter 411, division 30, is considered either the 'designated caregiver' or the person who assigns designated caregivers.

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(21) "Enhanced care services" means a selected licensed adult foster home, nursing, or residential care facility where long term care supports are provided under a specific needs contract and mental health rehabilitation services are provided on site five to seven days a week.

(22) "Exception payment" means a payment to the provider per OAR 411-027-0050.

(23) "Healthcare provider" means a licensed provider providing services to an eligible individual including, but not limited to:

- (a) Home health,
- (b) Hospice,
- (c) Mental health,
- (d) Primary care,
- (e) Specialty care,
- (f) Pharmacy, or
- (g) Hospitalization.

(24) "Home and community-based care contractor" means a Department contractor who is providing Medicaid funded residential or in-home services to an individual eligible for or receiving services under these rules. Residential or in-home services include:

- (a) Adult foster homes;
- (b) Assisted Living Facilities;
- (c) In-home agencies;
- (d) Residential care facilities;
- (e) Specialized living; and
- (f) In-home services.

(25) "Home and community-based care services" mean services approved by the Centers for Medicare and Medicaid Services for eligible individuals who are aged and physically disabled in accordance with State Plan K Community First Choice requirements.

(26) "Individual" means a person eligible for and receiving Behavior Support Services.

(27) "In-home care agency" means a licensed agency as described in OAR chapter 333, division 536 or a "home health agency" as defined in ORS 443.005, which has a contract with the Department to provide services for State Plan K Community First Choice or Independent Choice.

(28) "In-home services" means the Medicaid Program provided under OAR chapter 411, division 30, using caregivers who are either employees of in-home care agencies or who are employed by the Individual.

(29) "Initial person-centered evaluation" means the person-centered evaluation the behavior consultant begins at the first visit to determine what behavior supports the individual needs.

(30) "Local office" means the Department office or Area Agency on Aging, responsible for Medicaid services including case management, referral, authorization, and oversight of Behavior Support Services provided to an individual.

(31) "Mandatory Department forms" mean the forms required to document the services in these rules. Mandatory forms are posted on the Department website.

(32) "Memory care communities" means the programs that include Behavior Support Services per OAR chapter 411, division 57.

(33) "Person-centered" means a formal or informal planning process for gathering and organizing information to help an individual:

- (a) Determine and describe choices about personal goals, activities, 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.

(34) "Person-centered evaluation" means the information gathered by the behavior consultant to create a Behavior Support Plan, which includes an activity evaluation. The person-centered evaluation process includes observation of the individual and interviews with the individual, their caregivers, members of the individual's service planning team, the case manager, and social supports.

(35) "Provider" means an entity that hires employees or subcontractors who meet the behavior consultant qualifications in OAR 411-046-0180, have a contract with the Department to provide Behavior Support Services, and is an enrolled Medicaid provider who meets:

- (a) The requirements in these rules;
- (b) The requirements in OAR 407-120-0300 Medicaid provider enrollment and claiming; and
- (c) As applicable, the requirements under OAR 410-120, Medicaid General Rules.

(36) "Residential care and assisted living facilities" means the licensed entity providing services per OAR chapter 411, division 54 to an individual eligible for or receiving Behavior Support Services.

(37) "Service activation date" means the date which all timeframes begin. This date is either the date of the referral for Behavior Support Services, or a later date that is approved by local office management.

(38) "Service plan" means the service or care plan provided to the Medicaid eligible individual who is determined to need or is receiving Behavior Support Services required under:

- (a) Adult Foster Homes, OAR chapter 411, division 50;
- (b) Residential Care and Assisted Living Facilities, OAR chapter 411, division 54;
- (c) Specialized Living Services, OAR chapter 411, division 65;
- (d) In-Home Services, OAR chapter 411, division 030.

(39) "Specialized living services" means the Department contractor performing services provided per OAR chapter 411, division 65 for an individual living in a designated home-based location.

(40) "Specific needs or supplemental contract" means the services which are covered under OAR 411-027-0075, payment limitations in community-based care services.

(41) "Service notes" means the documentation which documents the coaching, monitoring, and other services provided by the behavior consultant to implement the Behavior Support Plan on the Department's mandatory form.

(42) "These rules" mean the rules in OAR chapter 411, division 46.

(43) "Written approval" means the Department's certification of a provider to be a behavior consultant.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

Hist.: APD 17-2014, f. & cert. ef. 6-23-14

## 411-046-0120

### Eligibility

(1) Individuals must meet the following requirements to receive Behavior Support Services:

- (a) Be eligible for home and community-based care services provided through APD; and
- (b) Be receiving services through either State Plan K Community First Choice or Independent Choices.

(2) Behavior Support Services may be provided to eligible individuals noted in (1) above who may benefit from the service or have caregivers who may benefit from the service based on the individual's functional needs assessment that is performed by the case manager. An eligible individual includes, but is not limited to:

- (a) An individual at risk of requiring behavior interventions;
- (b) An individual whose caregiver requests assistance in developing person-centered interventions;
- (c) An individual with a placement failure related to their behavior;
- (d) An individual at risk of involuntary move out or who has received an eviction notice;
- (e) An individual receiving Medicaid service payments to support behavior interventions, such as a behavior add-on or an exception; or
- (f) An individual whose provider receives a payment for costs associated with interventions needed to address the individual's challenging behaviors.

(3) All Behavior Support Services must be pre-authorized by:

- (a) The eligible individual's case manager; or
- (b) A Department authorized placement in a home or community-based care setting where the Medicaid service payment includes Behavior Support Services.

(4) Eligible individuals, or their designated representative, may request or refuse to participate in Behavior Support Services. Consultation may still be provided to the care provider.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

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## 411-046-0130

### Limitations

(1) Behavior Support Services, defined in this rule, may not be provided to:

- (A) Individuals who are receiving:
- (a) Specific needs setting contracted rate for "enhanced care services"; or
- (B) Services through Developmental Disabilities per OAR chapter 411, division 308, OAR chapter 411, division 330, or OAR chapter 411, division 325.

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- (b) Individuals receiving services in a nursing facility or hospital;
- (2) Behavior consultation services may not be provided solely to:
  - (a) Assist in protective service investigations or licensing inspections;
  - (b) Assist in administrative functions such as, pre-admission screenings, eligibility determinations, or case manager assessments; or
  - (c) Replace or support interventions for adult protective services, crisis management, law enforcement, or 911 emergency services that are required when the behavior of concern is causing an immediate danger to the client, other residents, or caregivers.

(3) Behavior Support Services are separate from interventions addressing behavior symptoms as part of:

- (a) Mental health therapy or counseling;
- (b) Health or mental health plan coverage; or
- (c) Vocational or educational services.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

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## 411-046-0140

### Behavior Support Services

(1) Behavior Support Services assist individuals with behavioral challenges, due to their disability, in accomplishing activities of daily living, instrumental activities of daily living, and health-related tasks.

(2) Behavior Support Services include consultation to the caregiver on mitigating behavior that may place the individual's health and safety at risk and to prevent institutionalization.

(3) All referrals must be made by the individual's case manager, on the Department's mandatory form, which is sent to the Behavior Support Service provider.

(4) Behavior Support Service providers, their employees, or subcontractors acting as behavior consultants, must provide the following services to individuals they accept for services:

- (a) Review of Referral.

(A) The Behavior Support Service consultant or provider must provide a documented decision regarding denial or acceptance of the referral within 2 business days.

(B) Service activation dates that are more than 7 days past the referral acceptance date must be approved by the referring Case Manager.

(C) Providers must ensure adequate numbers of behavior consultants are available to meet the service needs of all individuals accepted for service.

(D) The following entities must be informed of accepted referrals by the case manager:

- (i) The individual or their legal representative; and
  - (ii) The person in charge of the individual's Medicaid residential or home-based service plan.
- (b) Person-Centered Evaluations.

(A) An initial person-centered evaluation shall be started within 5 business days of the service activation date. The evaluation may be updated at the discretion of the behavior consultant, based on information gathered from coaching activities.

(B) Person-centered evaluation activities must support the Behavior Support Plan interventions, the scope of services provided, and include, at a minimum the content noted on the Department's mandatory form.

(C) The evaluation must be documented on the Department's mandatory form and provided to the case manager upon request.

(D) As part of the person-centered evaluation, the behavior consultant must conduct an activity evaluation.

- (c) Behavior Support Plan.

(A) The Behavior Support Plan shall be documented on the Department's mandatory form and completed within 20 business days of the initial person-centered evaluation or updated within 5 business days of any new evaluation activity. The plan must support the interventions and scope of the services provided.

(B) The behavior consultant is responsible for developing a Behavior Support Plan that considers the resources available at the individual's home.

(C) All strategies in the Behavior Support Plan must align with the individual's residential service or care plan and activity program required under licensing or Medicaid Program rules.

(D) The Behavior Support Plan must be explained to the individual in a manner the individual can understand.

- (E) The plan must include:

- (i) An Activity Plan that is developed following an activity evaluation.

The activity evaluation must examine, but is not limited to examining, the individuals:

- (I) Past and current interests;
- (II) Current abilities and skills as they relate to activities of daily living, instrumental activities of daily living, and health-related tasks;
- (III) Emotional and social needs and patterns;
- (IV) Physical abilities and limitations;
- (V) Adaptations necessary for the resident to participate in their activities of choice;

(ii) A list of person-centered activities must be identified based on the evaluation and included as a distinct part of the Behavior Support Plan. The list must include structured and non-structured activities that meet the individual's current preferences. Activities include, but are not limited to:

- (I) Occupation or chore related tasks;
- (II) Scheduled and planned events (e.g. entertainment, outings);
- (III) Spontaneous activities for enjoyment or that may help diffuse a behavior;
- (IV) One to one activities that encourage positive relationships between residents and staff (e.g. life story, reminiscing, music);
- (V) Spiritual, creative, and intellectual activities;
- (VI) Sensory stimulation activities;
- (VII) Physical activities that enhance or maintain a resident's ability to ambulate or move;
- (VIII) Outdoor activities; and
- (IX) Night time activities.

(F) Identification of strategies to help caregivers provide activities and address emergent behaviors.

(G) Completed Behavior Support Plans, and any subsequent updates, must be reviewed with, and provided to, the people responsible for the individual's residential or home-based service plan and provided to the case manager.

(H) The behavior consultant must document a minimum of one review of the Behavior Support Plan with a designated caregiver on the Department's mandatory form.

(I) Behavior Support and Activity Plans must be modified based on feedback from coaching activities, to ensure caregiver participation and to evaluate the proposed strategies.

- (d) Coaching Caregivers.

(A) The behavior consultant must develop a coaching plan describing how they will coach each caregiver to implement the Behavior Support Plan. The coaching plan may be included in the Behavior Support Plan.

(B) The behavior consultant must schedule and initiate onsite coaching to the designated caregivers within 30 business days of service activation.

(C) The behavior consultant should review information with the caregiver's employer and include, at a minimum the following content:

- (i) Review of the Behavior Support Plan;
- (ii) Discussion on how activities can be incorporated into the individual's daily routine;
- (iii) Demonstration of desired interventions by the behavior consultant;
- (iv) Observation or role play by the caregiver on implementing portions of the Behavior Plan; and
- (v) Gathering of feedback from caregivers on how to modify the plan or activities.
- (vi) The review may be conducted as part of a coaching activity.
- (vii) The Behavior consultant will advise caregivers to contact primary the health care provider or long term care nurse, as a part of coaching, when it relates to an individual possibly experiencing a medical issue that may be impacting their behaviors, or if medication interaction may be a concern related to behaviors.

(D) Documentation of all coaching activity, including dates and participants, must be provided on the Department's mandatory form and, upon request, provided to the employers or supervisors of the designated caregivers who received coaching.

- (e) Monitoring.

(A) The behavior consultant must provide at least two onsite monitoring visits to:

- (i) Conduct observations;
- (ii) Gather information;
- (iii) Evaluate caregiver and individual responses to the Behavior Support and the Activity Plans; and
- (iv) Carry out coaching activities.

(B) After the Behavior Support Plan is completed and a minimum of two on-site coaching visits are conducted, monitoring can be provided by phone or through secure video conferencing, if all parties agree.

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(C) Documentation of all monitoring must be provided on the Department's mandatory form.

(f) Service Plan Coordination.

(A) Completed Behavior Support Plans are considered part of the individual's activity, service, or care plan required by the home and community-based care license or Medicaid Program.

(i) Home and community-based care contractors must assign enough designated caregivers to ensure the interventions described in the Behavior Support Plan, including the Behavior Support Interventions, can be implemented in accordance with licensing or Medicaid Program standards.

(ii) Home and community-based care contractors must identify charting protocols for the behavior consultant to document any onsite activity provided to the eligible individual or their caregiver.

(iii) If the behavior consultant identifies any barriers that prevent the implementation of the Behavior Plan, they must notify the home and community-based care contractor within 2 business days.

(iv) Home and community-based care contractors must report to case managers, within 5 business days, if the Behavior Support Plan cannot be implemented or if the behavior consultant is not utilizing input from caregivers or the service planning team.

(B) Behavior consultants who are not providing services as part of a supplemental or specific needs setting contract may participate on the individual's service planning team or mental health treatment team only to review the individual's Behavior Support Plan.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

Hist.: APD 17-2014, f. & cert. ef. 6-23-14

## 411-046-0150

### Authorizations

(1) Behavior Support Services must be prior-authorized by the eligible individual's case manager using the referral process noted in OAR 411-046-0140(4)(a). The Case manager is responsible for ensuring the individual is eligible for an initial referral and ongoing Behavior Support Services.

(2) Service hours for person-centered evaluation and development of the Behavior Support Plan are authorized by the individual's case manager effective on the date the behavior consultant accepts and signs the Department approved referral form.

(3) Case managers can authorize up to 40 hours for the initial assessment, service planning, and follow up. An additional 40 hours may be approved by the local office management for ongoing service delivery. The Department may approve additional hours as defined in OAR 411-046-0220 if the individual's functional needs assessment indicates the need for additional hours.

(4) For services noted in OAR 411-046-0140(4)(a) to (4)(f), the provider should make every effort to complete them within 120 days from the service activation date. However, prior authorizations are effective for a full 12 month period from the initial service activation date. After 12 months, a new authorization must be requested and approved.

(5) Authorizations for service hours must be completed by the local office within 5 business days of receiving notification of referral acceptance.

(6) Prior authorizations are in effect for a 12 month period from the initial service activation date. After 12 months, a new authorization must be requested and approved.

(7) Requests for more than 80 hours of service must be reviewed and approved by the Department.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

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## 411-046-0160

### Communication

(1) Required Reporting.

Behavior consultants must report suspected or known neglect or abuse of all adults and elderly individuals as required by ORS 124.050 to 095, 430.735 to 765 and 419B to 419B.045.

(2) Confidentiality.

(a) Behavior consultants must adhere to the confidentiality standards as described in the Department contract as well as the Federal HIPAA privacy rules.

(b) Any written, verbal, digital, video, and electronic information regarding an individual must adhere to the Department's confidentiality standards as described in OAR chapter 407, division 14 and Federal HIPAA standards.

(3) Notification.

(a) Behavior consultants must notify the home and community-based care contractor of the following:

(A) Life threatening health and safety concerns must be reported immediately. This communication may occur in person or by phone.

(B) Concerns regarding a caregiver's response to coaching activity must be reported as soon as possible. This communication may occur in person, by phone, or by email.

(C) Any permanent reassignment of a behavior consultant must be reported within 5 business days or prior to onsite service delivery. This communication may occur in person, by phone, or by email.

(b) Behavior consultants must notify the case manager or local office designee of the following:

(A) Life threatening health and safety concerns of an individual must be reported immediately, by phone or in person.

(B) Concerns regarding the individual's placement must be reported within one business day. This communication may occur by email or phone.

(C) Any permanent reassignment of a behavior consultant, must be reported within 5 business days or prior to onsite service delivery. This communication may occur by email or phone.

(D) An administrator, licensee, or designated caregiver who is unwilling or unable to implement the Behavior Support Plan, after completion of coaching plans and service coordination activities. This communication may occur by email or phone.

(c) Case managers and behavior consultants are required to exchange information regarding changes in the individual's eligibility status, service location, or service needs during the duration of the Behavior Support Service.

(d) Behavior consultants must report suspected abuse immediately to the local Departmental office, designee office, or by calling the Department's toll-free abuse reporting hotline.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

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## 411-046-0170

### Documentation

(1) Compliance with documentation standards in this rule and completion of mandatory Department forms is intended to ensure communication between case managers and home and community-based care providers.

(2) The documentation requirements in this rule do not replace or substitute for the documentation requirements in the:

(a) Medicaid Provider Rules governing provider requirements as described in OAR chapter 407, division 120, Provider Rules, MMIS Provider Enrollment and Claiming; Contractor Audits, Appeals and Post Payment Recoveries;

(b) Medicaid General Rules under OAR chapter 410, division 120 as applicable; and

(c) Licensing or Medicaid Program rules governing the home and community-based care provider, as applicable.

(3) Behavior consultants are expected to complete mandatory Department forms for support services provided under 411-046-0140.

(4) Use of alternative, but equivalent forms, may be approved by the Department using the exceptions process under 411-046-0220 or as defined in supplemental or specific needs setting contracts or individuals who receive Behavior Support Services as part of their monthly service rate.

(5) Mandatory forms must be sent to the case manager before or at the time of submission of invoices or before receipt of the monthly Medicaid service rate.

(a) Documentation must support the services billed and adhere to the timeframes noted in this rule and on the mandatory forms.

(b) Claims will not be paid until the mandatory forms are submitted to the individual's case manager and the documentation noted in 411-046-0170(2) is completed.

(6) Behavior Support Service providers are expected to maintain a written record of all services provided to, and for, an individual and an individual's caregiver.

(a) The record must include copies of all documentation provided to the:

(A) Case manager;

(B) Home and community-based care contractor; and

(C) Behavior consultant or provider maintained to meet 411-046-0170(2)(a)-(c).

(b) The record must be retained until the behavior consultant no longer provides services to the individual, at which time, the behavior con-

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sultant or the agency must provide a copy of any part of the record that was not previously provided to the case manager.

(c) The behavior consultant or agency must retain the original record, following HIPAA practices, for a period of seven years.

(d) All documentation must be provided in HIPAA secure format.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

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## 411-046-0180

### Qualifications for Providers and Behavior Consultants

(1) The Department shall select qualified providers according to standards:

(a) In these rules;

(b) In OAR 407-120-0320; and

(c) In OAR chapter 410, division 120, as applicable.

(2) Providers must be enrolled as a Medicaid provider.

(3) Behavior consultants must complete the background check process described in OAR 407-007-0200 to 407-007-0370 with an outcome of approved or approved with restrictions.

(4) Behavior Support Service Medicaid providers must have a Department contract to provide:

(a) Home or community-based care services defined under a specific needs setting, and which includes Behavior Support Services as part of the contracted rate; or

(b) Behavior Support Services with qualified employees or subcontractors who provide time limited consultation, at a range of settings, where the referred individual lives.

(5) A Behavior Support Service Medicaid provider must employ or subcontract with behavior consultants who meet all of the following requirements:

(a) Pass the Department required criminal record check processes per OAR 407-007-0200 to 407-007-0370 and meet one of the following:

(A) Pass the Behavior Consultant Competency Evaluation administered by a Department approved contractor;

(B) Possess and maintain certification from a Department approved program noted on the Department website; or

(C) Have written approval to perform behavior consultant work from the Department based upon review of resume, certification, or education. Requests for this approval must follow 411-046-0220, exceptions to rules.

(b) Maintain compliance with continuing education requirements under 411-046-0210.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

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## 411-046-0190

### Disenrollment or Termination

(1) Medicaid providers of Behavior Support Services, their behavior consultant employees, or subcontractors may be terminated or prohibited from providing services for any of the following:

(a) Violation of any part of these rules;

(b) Violation of the protective service and abuse rules in OAR chapter 411, division 20 and OAR chapter 407, division 45;

(c) A demonstrated pattern of repeated unsubstantiated complaints of neglect and abuse per OAR chapter 411, division 020 and OAR chapter 407, division 045;

(d) Failure to meet behavior consultant qualifications or continuing education requirements;

(e) Failure to provide copies of records to designated Department or Oregon Health Authority entities;

(f) Repeated failure to participate in Behavior Support Plan review or service planning meetings when requested by an individual's case manager;

(g) Failure to provide the services noted in these rules; or

(h) Fraud or misrepresentation in the provision of services under these rules.

(2) Medicaid providers have rights to appeal a termination based on OAR 407-120-0360(8)(g) and, as applicable, OAR chapter 410, division 120.

(3) Medicaid providers of these services must provide 30 day written notice, or more if specified in contract, to the Department of the decision to cease services.

Stat. Auth.: ORS 410.070

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## 411-046-0200

### Compensation and Billing

(1) All billing and claims must comply with OAR 407-120-0330; OAR 407-120-0340; and OAR chapter 410, division 120, as applicable.

(2) Compensation for Behavior Support Services in supplemental or specific needs setting contracts shall be defined through the Department contract.

(3) The Department may adjust rates in underserved areas to ensure individuals have access to services.

(4) Failure to comply with standards in this rule may result in determination of overpayment for which restitution may be sought.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

Hist.: APD 17-2014, f. & cert. ef. 6-23-14

## 411-046-0210

### Continuing Education Requirements

(1) Behavior consultants must maintain a record verifying completion of at least 12 hours of continuing education per year in person-centered care or behavior support training that is provided by a Department approved trainer or training organization noted on the Department website.

(2) Requests for documentation verifying compliance with this requirement must be provided upon request to the Department.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

Hist.: APD 17-2014, f. & cert. ef. 6-23-14

## 411-046-0220

### Exceptions to Rules

(1) Exceptions to these rules may be made by the Department central office and must be granted by the Department in writing. Implementation of an exception may not occur without written approval.

(2) On a case specific basis, the following exceptions may be granted by local office managers:

(a) Changing the timeframes for service activation,

(b) Initiating the person-centered evaluation,

(c) Completing the Behavior Plan; or

(d) Initiating coaching.

(3) Requests for exceptions to the rules must include, but are not limited to, a written request provided to central office management for prior approval. Documentation must include:

(a) Local office management support for the exception request;

(b) Description of the benefit to the individual or program served by the Department as result of the exception;

(c) Details regarding the specific rule for which:

(A) The exception will be granted;

(B) Rationale for why the exception is needed;

(C) Proposed duration of the exception;

(D) Identification of alternatives (including rule compliance); and

(E) Costs, if any, of the exception.

(4) Exceptions will not impact compliance, and will not result in non-compliance, with any OAR other than chapter 411, division 46.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

Hist.: APD 17-2014, f. & cert. ef. 6-23-14

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**Rule Caption:** Repeal inapplicable rules for Individual Support Plans in OAR chapter 411, division 341

**Adm. Order No.:** APD 18-2014

**Filed with Sec. of State:** 6-25-2014

**Certified to be Effective:** 7-1-14

**Notice Publication Date:** 6-1-2014

**Rules Repealed:** 411-341-1300, 411-341-1310, 411-341-1320, 411-341-1330, 411-341-1340, 411-341-1350, 411-341-1360, 411-341-1370

**Subject:** The Department of Human Services (Department) is permanently repealing the rules for individual support plans (ISP) for individuals with intellectual or developmental disabilities in OAR chapter 411, division 341 because the rules are no longer applicable. Current ISP rule requirements are located in corresponding program rules for developmental disability services.

**Rules Coordinator:** Kimberly Colkitt-Hallman—(503) 945-6398

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**Rule Caption:** Oregon Project Independence for Adults with Disabilities

# ADMINISTRATIVE RULES

**Adm. Order No.:** APD 19-2014(Temp)  
**Filed with Sec. of State:** 6-26-2014  
**Certified to be Effective:** 7-1-14 thru 12-28-14  
**Notice Publication Date:**

**Rules Adopted:** 411-032-0050

**Subject:** OAR 411-032-0050 is being adopted to establish the policies that apply to a pilot project expanding Oregon Project Independence services to adults with physical disabilities in regionally diverse pilot locations starting July 1, 2014. This rule sets out implementation, eligibility, and services offered through the pilot.

**Rules Coordinator:** Kimberly Colkitt-Hallman—(503) 945-6398

## 411-032-0050

### Pilot for Adults with Disabilities

(1) The purpose of this rule is to set out the policies that apply to the expansion of Oregon Project Independence services to adults with physical disabilities. The pilot allows the Department to study the potential to transition Oregon Project Independence to a statewide, age neutral, program that assesses and serves seniors and persons with physical disabilities based on their functional needs.

(2) "Disability" means, for the purposes of this rule, a physical, cognitive, or emotional impairment which, for an individual, constitutes or results in a functional limitation in one or more of the activities of daily living defined in OAR 411-015-0006, or in one or more of the instrumental activities of daily living defined in 411-015-0007.

(3) "Adult" means, for purposes of this rule, any person 19 to 59 years of age.

(4) OAR 411-032-0000 to 411-032-0044 apply to this pilot program, except as noted below:

(a) Authorized Services and Allowable Costs. Authorized services for the pilot funds include home care supportive services, service coordination, and other services, including the following:

- (A) Home care.
- (B) Chore services.
- (C) Assistive Technology.
- (D) Personal care services.
- (E) Adult day services.
- (F) Registered nurse services.
- (G) Home delivered meals.

(H) Services to support community caregivers and strengthen the natural support system of individuals.

- (I) Evidence-based health promotion services.
- (J) Options counseling.

(K) Assisted transportation options that allow individuals to live at home and access the full range of community resources.

(b) Eligibility.

(A) In order to qualify for authorized services under this pilot, an individual must:

- (i) Be an adult with a disability;
- (ii) Be a resident of a designated pilot area and seek services at that location;

(iii) Not be receiving financial assistance or Medicaid, except SNAP, Qualified Medicare Beneficiary, or Supplemental Low Income Medicare Beneficiary Programs;

(iv) Not have natural supports, or other services available, in the community that would meet the identified need; and

(v) Meet the requirements of the long-term care services priority rules in OAR chapter 411, division 015.

(B) The Area Agencies on Aging must determine eligibility prior to an individual receiving authorized services.

Stat Auth: ORS 409.050, 410.070, 410.435  
Stats Implemented: ORS 409.010, 410.410-410.480  
Hist.: APD 19-2014(Temp), f. 6-26-14, cert. ef. 7-1-14 thru 12-28-14

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### Rule Caption: Nursing Facility Rates

**Adm. Order No.:** APD 20-2014

**Filed with Sec. of State:** 7-1-2014

**Certified to be Effective:** 7-1-14

**Notice Publication Date:** 6-1-2014

**Rules Amended:** 411-070-0442, 411-070-0452

**Subject:** The Department of Human Services (Department) is permanently updating the Medicaid Nursing Facility rules set forth in OAR chapter 411, division 70 to allow the Department to do an annual rebasing of the nursing facility rate as authorized in HB

2216. The Department changed the language in the rule to take out the biennial terminology in regards to inflation. The permanent rules allow the Department to address inflation used for annual rebasing of nursing facility rates.

**Rules Coordinator:** Kimberly Colkitt-Hallman—(503) 945-6398

## 411-070-0442

### Calculation of the Basic Rate and Complex Medical Add-on Rate

(1) The rates are determined annually and referred to as the Rebasing Year.

(a) The basic rate is based on the statements received by the Department by October 31 for the fiscal reporting period ending on June 30 of the previous year. For example, for the biennium beginning July 1, 2013, statements for the period ending June 30, 2012 are used. The Department desk reviews or field audits these statements and determines the allowable costs for each nursing facility. The costs include both direct and indirect costs. The costs and days relating to pediatric beds are excluded from this calculation. The Department only uses financial reports of facilities that have been in operation for at least 180 days and are in operation as of June 30.

(b) For each facility, its allowable costs, less the costs of its self-contained pediatric unit (if any), are inflated by the DRI Index, or its successor index. The DRI table as published in the fourth quarter of the year immediately preceding the beginning of the payment year will be used. Costs will be inflated to reflect projected changes in the DRI Index from the mid-point of the fiscal reporting period to the mid-point of the payment year (e.g., for the July 1, 2014 rebase, the midpoint of the fiscal reporting period is December 31, 2012 and the mid-point of the payment year is December 31, 2014.)

(c) For each facility, its allowable costs per Medicaid day is determined using the allowable costs as inflated and resident days, excluding pediatric days as reported in the statement.

(d) The facilities are ranked from highest to lowest by the facility's allowable costs, per Medicaid day.

(e) The basic rate is determined by ranking the allowable costs per Medicaid day by facility and identifying the allowable cost per day at the applicable percentage. If there is no allowable cost per day at the applicable percentage, the basic rate is determined by interpolating the difference between the allowable costs per day that are just above and just below the applicable percentage to arrive at a basic rate at the applicable percentage. The applicable percentage for the period beginning July 1, 2013 is at the 63rd percentile.

(2) The Department provides an augmented rate to nursing facilities who qualify under the Quality and Efficiency Incentive Program as described in OAR 411-070-0437. To receive the augmented rate, the bed capacity must be purchased on or after October 7, 2013 and on or before December 31, 2015. The qualifying nursing facility is paid the augmented rate for each Medicaid-eligible resident.

(3) Nursing facility bed capacity in Oregon shall be reduced by 1,500 beds by December 31, 2015, except for bed capacity in nursing facilities operated by the Department of Veteran's Affairs and facilities that either applied to the Oregon Health Authority for a certificate of need between August 1, 2011 and December 1, 2012, or submitted a letter of intent under ORS 442.315(7) between January 15, 2013 and January 31, 2013. An official bed count measurement shall be determined and issued by the Department prior to July 1, 2016 and each quarter thereafter if the goal of reducing the nursing facility bed capacity in Oregon by 1,500 beds is not achieved.

(a) For the period beginning July 1, 2013 and ending June 30, 2016, the Department shall reimburse costs as set forth in section (1) of this rule at the 63rd percentile.

(b) For each three-month period beginning on or after July 1, 2016 and ending June 30, 2020, in which the reduction in bed capacity in licensed facilities is less than the goal described in this section, the Department shall reimburse costs at a rate not lower than the percentile of allowable costs according to the following schedule:

(A) 63rd percentile for a reduction of 1,500 or more beds.

(B) 62nd percentile for a reduction of 1,350 or more beds but less than 1,500 beds.

(C) 61st percentile for a reduction of 1,200 or more beds but less than 1,350 beds.

(D) 60th percentile for a reduction of 1,050 or more beds but less than 1,200 beds.

(E) 59th percentile for a reduction of 900 or more beds but less than 1,050 beds.

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(F) 58th percentile for a reduction of 750 or more beds but less than 900 beds.

(G) 57th percentile for a reduction of 600 or more beds but less than 750 beds.

(H) 56th percentile for a reduction of 450 or more beds but less than 600 beds.

(I) 55th percentile for a reduction of 300 or more beds but less than 450 beds.

(J) 54th percentile for a reduction of 150 or more beds but less than 300 beds.

(K) 53rd percentile for a reduction of 1 to 149 beds.

(4) The complex medical add-on rate is 40 percent of the basic rate.

(5) The Department shall add a standard payment to fund implementation of certified nursing assistant staffing requirements contained in OAR 411-086-0100 in accordance with the Legislatively Adopted Budget.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070, 2003 OL Ch. 736, 2007 OL Ch. 780, 2009 OL Ch. 827, 2011 OL Ch. 630 & 2013 OL Ch. 608

Hist.: SPD 36-2004, f. 12-23-04, cert. ef. 12-28-04; SPD 15-2007(Temp), f. & cert. ef. 9-10-07 thru 3-8-08; SPD 2-2008, f. 2-29-08, cert. ef. 3-1-08; SPD 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; SPD 15-2009, f. 11-30-09, cert. ef. 12-1-09; SPD 17-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 22-2011, f. 10-7-11, cert. ef. 11-1-11; SPD 10-2012, f. 7-31-12, cert. ef. 8-1-12; SPD 37-2013(Temp), f. 10-4-13, cert. ef. 10-7-13 thru 4-5-14; SPD 39-2013(Temp), f. 10-4-13, cert. ef. 10-7-13 thru 4-5-14; APD 2-2014, f. 3-13-14, cert. ef. 4-1-14; APD 20-2014, f. & cert. ef. 7-1-14

## 411-070-0452

### Pediatric Nursing Facilities

#### (1) PEDIATRIC NURSING FACILITY.

(a) A pediatric nursing facility is a licensed nursing facility at least 50 percent of whose residents entered the facility before the age of 14 and all of whose residents are under the age of 21.

(b) A nursing facility that meets the criteria of subsection (1)(a) of this section is reimbursed as follows:

(A) The pediatric rate is a prospective rate and is not subject to settlement. The Department uses financial reports of facilities that have been in operation for at least 180 days and are in operation as of June 30.

(B) The facility specific pediatric cost per resident day is inflated as described in OAR 411-070-0442 1(b). The Oregon Medicaid pediatric days are multiplied by the inflated facility specific cost per resident day for each pediatric facility. The totals are summed and divided by total Oregon Medicaid days to establish the weighted average cost per pediatric resident day. The rebase relationship percentage of 93 percent is applied to the weighted average cost to determine the pediatric rate.

(c) Even though pediatric facilities are reimbursed in accordance with subsection (1)(b) of this section, pediatric facilities must comply with all requirements relating to the timely submission of Nursing Facility Financial Statements.

#### (2) LICENSED NURSING FACILITY WITH A SELF-CONTAINED PEDIATRIC UNIT.

(a) A nursing facility with a self-contained pediatric unit is a licensed nursing facility that provides services for pediatric residents (individuals under the age of 21) in a separate and distinct unit within or attached to the facility with staffing costs separate and distinct from the rest of the nursing facility. All space within the pediatric unit must be used primarily for purposes related to the services of pediatric residents and alternate uses may not interfere with the primary use.

(b) A nursing facility that meets the criteria of subsection (2)(a) of this section is reimbursed for pediatric residents served in the pediatric unit as described in section (1) of this rule.

(c) Licensed nursing facilities with a self-contained pediatric unit must comply with all requirements relating to the timely submission of Nursing Facility Financial Statements and must file a separate attachment, on forms prescribed by the Department, related to the costs of the self-contained pediatric unit.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070, OL 2011 ch. 630, & OL 2013 ch. 608

Hist.: SSD 4-1988, f. & cert. ef. 6-1-88; SSD 8-1991, f. & cert. ef. 4-1-91; SSD 14-1991(Temp), f. 6-28-91, cert. ef. 7-1-91; SSD 18-1991, f. 9-27-91, cert. ef. 10-1-91; SSD 6-1993, f. 6-30-93, cert. ef. 7-1-93; SSD 6-1995, f. 6-30-95, cert. ef. 7-1-95; SSD 6-1996, f. & cert. ef. 7-1-96; SDDS 10-1999, f. 11-30-99, cert. ef. 12-1-99; SPD 9-2006, f. 1-26-06, cert. ef. 2-1-06; SPD 15-2007(Temp), f. & cert. ef. 9-10-07 thru 3-8-08; SPD 2-2008, f. 2-29-08, cert. ef. 3-1-08; SPD 15-2009, f. 11-30-09, cert. ef. 12-1-09; SPD 17-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 22-2011, f. 10-7-11, cert. ef. 11-1-11; SPD 10-2012, f. 7-31-12, cert. ef. 8-1-12; SDP 17-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 40-2013(Temp), f. 10-4-13, cert. ef. 10-7-13 thru 12-28-13; SPD 51-2013, f. 12-27-13, cert. ef. 12-28-13; APD 20-2014, f. & cert. ef. 7-1-14

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**Rule Caption:** In-Home Support for Children with Intellectual or Developmental Disabilities

**Adm. Order No.:** APD 21-2014(Temp)

**Filed with Sec. of State:** 7-1-2014

**Certified to be Effective:** 7-1-14 thru 12-28-14

**Notice Publication Date:**

**Rules Adopted:** 411-308-0135

**Rules Amended:** 411-308-0020, 411-308-0030, 411-308-0050, 411-308-0060, 411-308-0070, 411-308-0080, 411-308-0100, 411-308-0120, 411-308-0130

**Subject:** The Department of Human Services (Department) is immediately updating the rules in OAR chapter 411, division 308 for in-home support for children with intellectual or developmental disabilities.

- OAR 411-308-0020 is being amended to incorporate the general definitions in 411-317-0000, update the definitions to reflect correct terminology, and include definitions for terms created by the temporary rulemaking;

- OAR 411-308-0030 is being amended to provide a uniform dispute resolution process by incorporating the complaint, Notification of Planned Action, and hearing rules adopted in OAR chapter 411, division 318;

- OAR 411-308-0050 is being amended to clarify that a child who accesses in home support through crisis eligibility must be to prevent out-of-home placement, and to allow time for the transition into other Medicaid services, if eligible;

- OAR 411-308-0060 is being amended to account for changes in Medicaid service eligibility;

- OAR 411-308-0070 is being amended to clarify when a child may be exited from in-home support services and to reiterate the requirement for a Notification of Planned Action in the instance services are terminated;

- OAR 411-308-0080 is being amended to require a plan for children accessing services through crisis eligibility, to reduce the need for in-home support, and to assist the child to access waiver or Community First Choice services, if eligible;

- OAR 411-308-0100 is being amended to remove the sanctions for independent providers, provider organizations, and general business providers;

- OAR 411-308-0120 is being amended to update the language to reflect the completion of the transition period for implementation of the Community First Choice 1915(k) state plan amendment and update the available supports to reflect changes to the proposed 1915(c) Home and Community Based Services waiver;

- OAR 411-308-0130 is being amended to update provider types to reflect changes in the 1915(c) Home and Community Based Services waiver; and

- OAR 411-308-0135 Standards for Employers is being adopted to assure the proper authority exists to withdraw employer authority in cases where it is necessary to protect a child, parent, or an employee from its misuse. The rule defines indications of misuse of employer authority, the steps that must be taken to remove employer authority, and appeals of the removal.

**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) "Abuse" means "abuse" of a child as defined in ORS 419B.005.

(2) "ADL" means "activities of daily living". ADL are basic personal everyday activities, such as eating, using the restroom, grooming, dressing, bathing, and transferring.

(3) "Annual Plan" means the written summary a services coordinator completes for a child, who is not enrolled in waiver or Community First Choice services. An Annual Plan is not an ISP and is not a plan of care for Medicaid purposes.

(4) "Assistive Devices" mean the devices, aids, controls, supplies, or appliances described in OAR 411-308-0120 that are necessary to enable a child to increase the ability of the child to perform ADL and IADLs or to

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perceive, control, or communicate with the environment in which the child lives.

(5) "Assistive Technology" means the devices, aids, controls, supplies, or appliances described in OAR 411-308-0120 that are purchased to provide additional security for a child and replace the need for direct interventions to enable self-direction of care and maximize independence of the child.

(6) "Attendant Care" means assistance with ADL, IADL, and health-related tasks through cueing, monitoring, reassurance, redirection, set-up, hands-on, and standby assistance as described in OAR 411-308-0120.

(7) "Background Check" means a criminal records check and abuse check as defined in OAR 407-007-0210.

(8) "Behavior Consultant" means a contractor with specialized skills who develops a Behavior Support Plan.

(9) "Behavior Support Plan" means the written strategy based on person-centered planning and a functional assessment that outlines specific instructions for a provider to follow to cause the challenging behaviors of a child to become unnecessary and to change the behavior of a provider, adjust environment, and teach new skills.

(10) "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 a child that prevents the child from accomplishing ADL, IADL, health related tasks, and cognitive supports to mitigate behavior. Behavior support services are provided in the home or community.

(11) "CDDP" means "Community Developmental Disability Program" as defined in OAR 411-320-0020.

(12) "Child" means an individual who is less than 18 years of age applying for, or determined eligible for, in-home support.

(13) "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.

(14) "Chore Services" mean the services described in OAR 411-308-0120 that are needed to restore a hazardous or unsanitary situation in the family home to a clean, sanitary, and safe environment.

(15) "Community Nursing Services" mean the nursing services described in OAR 411-308-0120 that focus on the chronic and ongoing health and safety needs of a child living in the family home. 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.

(16) "Community Transportation" means the services described in OAR 411-308-0120 that enable a child to gain access to community-based state plan and waiver services, activities, and resources. Community transportation is provided in the area surrounding the family home that is commonly used by people in the same area to obtain ordinary goods and services. The area is not determined by the social or recreational groups or activities of a child.

(17) "Cost Effective" means that a specific service, support, or item of equipment meets the service needs of a child and costs less than, or is comparable to, other similar service, support, or equipment options considered.

(18) "CPMS" means the Client Processing Monitoring System.

(19) "Crisis" means "crisis" as defined in OAR 411-320-0020.

(20) "Department" means the Department of Human Services.

(21) "Developmental Disability" means "developmental disability" as defined in OAR 411-320-0020 and described in OAR 411-320-0080.

(22) "Director" means the Director of the Department of Human Services, Office of Developmental Disability Services or the designee of the Director.

(23) "Employer" means, for the purposes of obtaining in-home support for children through an independent provider as described in these rules, the parent or a person selected by the parent to act on the behalf of the parent to provide the employer responsibilities described in OAR 411-308-0135.

(24) "Employer-Related Supports" mean the activities that assist a family with directing and supervising provision of services described in the ISP for a child. Employer-related supports 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 job descriptions;

and

(d) Fiscal intermediary services.

(25) "Environmental Accessibility Adaptations" mean the physical adaptations described in OAR 411-308-0120 that are necessary to ensure the health, welfare, and safety of a child in the family home, or that are necessary to enable the child to function with greater independence around the family home.

(26) "Environmental Safety Modifications" means the physical adaptations described in OAR 411-308-0120 that are made to the exterior of the family home as identified in the ISP for a child to ensure the health, welfare, and safety of the child or to enable the child to function with greater independence around the family home.

(27) "Exit" means termination or discontinuance of in-home support.

(28) "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 of the child 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 supports; and

(C) Determining who may receive family training.

(29) "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 support program site. Family home may include a certified child welfare foster home.

(30) "Family Training" means the training services described in OAR 411-308-0120 that are provided to a family to increase the capacity of the family to care for, support, and maintain a child in the family home.

(31) "Fiscal Intermediary" means a person or entity that receives and distributes in-home support funds on behalf of the family of an eligible child according to the ISP or Annual Plan. The fiscal intermediary acts as an agent for the family and performs activities and maintains records related to payroll and payment of employer-related taxes and fees. In this capacity, the fiscal intermediary does not recruit, hire, supervise, evaluate, dismiss, or otherwise discipline employees.

(32) "Founded Reports" 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.

(33) "Functional Needs Assessment":

(a) Means the comprehensive assessment or reassessment that:

(A) Documents physical, mental, and social functioning;

(B) Identifies risk factors, choices and preferences, service and support needs, strengths, and goals; and

(C) Determines the service level.

(b) The functional needs assessment for a child is known as the Child Needs Assessment. The Department incorporates Version B of the Child Needs Assessment dated July 1, 2014 into these rules by this reference. The Child Needs Assessment is maintained by the Department at: [www.dhs.state.or.us/spd/tools/dd/cm/CNA\\_Child\\_In-home.xls](http://www.dhs.state.or.us/spd/tools/dd/cm/CNA_Child_In-home.xls). Printed copies may be obtained by calling (503) 945-6398 or writing the Department of Human Services, Developmental Disabilities, ATTN: Rule Coordinator, 500 Summer Street NE, Salem, OR 97301.

(34) "General Business Provider" means an organization or entity selected by the parent or guardian of an eligible child and paid with in-home support funds that:

(a) Is primarily in business to provide the service chosen by the parent or guardian to the general public;

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(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.

(35) "Guardian" means the parent of a child or a person or agency appointed and authorized by a court to make decisions about services for the child.

(36) "IADL" means "instrumental activities of daily living". IADL include activities other than ADL required to enable a child to remain in the family home such as:

(a) Meal planning and preparation;

(b) Budgeting;

(c) Shopping for food, clothing, and other essential items;

(d) Performing essential household chores;

(e) Communicating by phone or other media; and

(f) Participating in the community.

(37) "ICF/IDD" means an intermediate care facility for individuals with intellectual disabilities.

(38) "In-Home Support" means individualized planning and service coordination, arranging for services to be provided in accordance with ISP, and purchase of supports that are not available through other resources that are required for children with intellectual or developmental disabilities who are eligible for in-home support services to live in the family home. In-home supports are designed to:

(a) Prevent unwanted out-of-home placement and maintain family unity; and

(b) Whenever possible, reunite families with children with intellectual or developmental disabilities who have been placed out of the family home.

(39) "In-Home Support Funds" mean 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 with an intellectual or developmental disability according to the ISP or Annual Plan for the child.

(40) "Incident Report" means the written report of any injury, accident, act of physical aggression, use of protective physical intervention, or unusual incident involving a child.

(41) "Independent Provider" means a person selected by the parent or guardian of a child and paid with in-home support funds to personally provide services to the child.

(42) "Individual" means a person with an intellectual or developmental disability applying for, or determined eligible for, developmental disability services.

(43) "Intellectual Disability" means "intellectual disability" as defined in OAR 411-320-0020 and described in 411-320-0080.

(44) "Intervention" means the action the Department or the designee of the Department requires when an employer fails to meet the employer responsibilities described in OAR 411-308-0135. Intervention includes, but is not limited to:

(a) A documented review of the employer responsibilities described in OAR 411-308-0135;

(b) Training related to employer responsibilities;

(c) Corrective action taken as a result of an independent provider filing a complaint with the Department, the designee of the Department, or other agency who may receive labor related complaints;

(d) Identifying an employer representative if a person is not able to meet the employer responsibilities described in OAR 411-308-0135; or

(e) Identifying another representative if the current employer representative is not able to meet the employer responsibilities described in OAR 411-308-0135.

(45) "ISP" means "Individual Support Plan" as defined in this rule. 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 the services and supports that are important for the child to meet the needs of the child identified through a functional needs assessment as well as the preferences of the child for service 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, state plan, or natural supports.

(46) "Level of Care" means a child meets the following institutional level of care for an ICF/IDD:

(a) The child has a condition of an intellectual disability or a developmental disability as defined in OAR 411-320-0020 and meets the eligi-

bility criteria in OAR 411-320-0080 for developmental disability services; and

(b) The child has a significant impairment in one or more areas of adaptive behavior as determined in OAR 411-320-0080.

(47) "Mandatory Reporter" means any public or private official as defined in OAR 407-045-0260 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 a child, regardless of whether or not the knowledge of the abuse was gained in the official capacity of the public or private official. 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 419B.231 is not required to report if the communication is privileged under 40.225 to 40.295.

(48) "Natural Supports" mean the parental responsibility for a child who is less than 18 years of age and the voluntary resources available to the child from the relatives, friends, neighbors, and the community that are not paid for by the Department.

(49) "Nursing Service Plan" means the plan that is developed by a registered nurse based on an initial nursing assessment, reassessment, or an update made to a nursing assessment as the result of a monitoring visit.

(a) The Nursing Service Plan is specific to a child and identifies the diagnoses and health needs of the child and any service coordination, teaching, or delegation activities.

(b) The Nursing Service Plan is separate from the ISP and any service plans developed by other health professionals.

(50) "OHP" means the Oregon Health Plan.

(51) "OHP Plus" means only the Medicaid benefit packages provided under OAR 410-120-1210(4)(a) and (b).

(52) "OIS" means the "Oregon Intervention System". OIS is the system of providing training to people who work with designated individuals to provide elements of positive behavior support and non-aversive behavior intervention. OIS uses principles of pro-active support and describes approved protective physical intervention techniques that are used to maintain health and safety.

(53) "OSIP-M" means "Oregon Supplemental Income Program-Medical" as described in OAR 461-001-0030. OSIP-M is Oregon Medicaid insurance coverage for individuals who meet the eligibility criteria described in OAR chapter 461.

(54) "Parent" means the biological parent, adoptive parent, stepparent, or legal guardian of a child.

(55) "Person-Centered Planning":

(a) Means a timely and formal or informal process that is driven by an individual, includes people chosen by the individual, ensures that the individual directs the process to the maximum extent possible, and that the individual is enabled to make informed choices and decisions consistent with CFR 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, service providers, 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.

(56) "Personal Support Worker" means "personal support worker" as defined in OAR 411-375-0010.

(57) "Plan Year" means 12 consecutive months from the start date specified on the authorized ISP or Annual Plan for a child.

(58) "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 intervention possible;

(c) Ensures that abusive or demeaning interventions are never used; and

(d) Evaluates the effectiveness of behavior interventions based on objective data.

(59) "Primary Caregiver" means 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.

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(60) "Protective Physical Intervention" means any manual physical holding of, or contact with, a child that restricts freedom of movement.

(61) "Provider" means a person, organization, or business selected by a parent or guardian and paid with in-home support funds to provide support to a child according to the ISP or Annual Plan for the child.

(62) "Provider Organization" means an entity selected by a parent or guardian and paid with in-home support funds that:

(a) Is primarily in business to provide supports for children with intellectual or developmental disabilities;

(b) Provides supports for a child through employees, contractors, or volunteers; and

(c) Receives compensation to recruit, supervise, and pay the person who actually provides support for the child.

(63) "Quality Assurance" means a systematic procedure for assessing the effectiveness, efficiency, and appropriateness of services.

(64) "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. Children who meet the crisis eligibility under OAR 411-308-0060(2) may be granted access to in-home supports through the regional process.

(65) "Relief Care" means the intermittent services described in OAR 411-308-0120 that are provided on a periodic basis for the relief of, or due to the temporary absence of, a primary caregiver.

(66) "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 a child.

(67) "Services Coordinator" means an employee of a CDDP, 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 in-home support. A services coordinator acts as a proponent for children with intellectual or developmental disabilities and their families' and is the person-centered plan coordinator of a child as defined in the Community First Choice state plan amendment.

(68) "Skills Training" means the activities described in OAR 411-308-0120 that are intended to maximize the independence of a child through training, coaching, and prompting the child to accomplish ADL, IADL, and health-related skills.

(69) "Specialized Medical Supplies" mean the medical and ancillary supplies described in OAR 411-308-0120, such as:

(a) Necessary medical supplies, specified in an ISP that are not available under the state plan;

(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.

(70) "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.

(71) "Supplant" means take the place of.

(72) "Support" means the assistance that a child and a family requires, solely because of the effects of an intellectual or developmental disability on the child, to maintain or increase 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.

(73) "These Rules" mean the rules in OAR chapter 411, division 308.

(74) "Transition Costs" mean the expenses described in OAR 411-308-0120 required for a child to make the transition to the family home from a nursing facility or ICF/IDD.

(75) "Vehicle Modifications" mean the adaptations or alterations described in OAR 411-308-0120 that are made to the vehicle that is the primary means of transportation for a child in order to accommodate the service needs of the child.

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 21-2011(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

## 411-308-0030

### In-Home Support Administration and Operation

(1) FISCAL INTERMEDIARY SERVICES. The CDDP must provide, or arrange a third party to provide, fiscal intermediary services for all families. The fiscal intermediary receives and distributes in-home support funds on behalf of a child's family. The responsibilities of the fiscal intermediary include payments to vendors as well as all activities and records related to payroll and payment of employer-related taxes and fees as an agent of a child's family who employs a person to provide services, supervision, or training in the family home or community. In this capacity, the fiscal intermediary may not recruit, hire, supervise, evaluate, dismiss, or otherwise discipline employees.

(2) GENERAL RECORD REQUIREMENTS. The CDDP must maintain records of services to children in accordance with OAR 411-320-0070, ORS 179.505, ORS 192.515 to 192.518, 45 CFR 205.50, 45 CFR 164.512, Health Insurance Portability and Accountability Act (HIPAA), 42 CFR Part 2 HIPAA, and any Department administrative rules and policies pertaining to service records.

(a) DISCLOSURE. For the purpose of disclosure from medical records under these rules, CDDPs are considered "providers" as defined in ORS 179.505(1) and ORS 179.505 is applicable.

(A) Access to records by the Department does not require authorization by a child's family.

(B) For the purposes of disclosure from non-medical records, all or portions of the information contained in the non-medical record may be exempt from public inspection under the personal privacy information exemption to the public records law set forth in ORS 192.502(2).

(b) SERVICE RECORDS. Records for children who receive in-home support must be kept up-to-date and must include:

(A) An easily accessed summary of basic information as described in OAR 411-320-0070, including the date of the child's enrollment in in-home support;

(B) Records related to receipt and disbursement of in-home support funds, including expenditure authorizations, expenditure verification, copies of CPMS expenditure reports, verification that providers meet requirements of OAR 411-308-0130, and documentation of family acceptance or delegation of the record keeping responsibilities outlined in this rule. Records must include:

(i) Itemized invoices and receipts to record the purchase of any single item;

(ii) Signed contracts and itemized invoices for any services purchased from independent contractors and professionals;

(iii) Written professional support plans, assessments, and reviews to document the acceptable provision of behavior support, nursing, and other professional training and consultation services; and

(iv) Pay records to record employee services, including timesheets signed by both employee and employer.

(C) Incident reports, including those involving CDDP staff;

(D) A functional needs assessment and other assessments used to determine required supports, preferences, and resources;

(E) When a child is not Medicaid eligible, documentation of the child's eligibility for crisis services and approval of the child's services through a regional process;

(F) The child's ISP or Annual Plan and reviews;

(G) The services coordinator's correspondence and notes related to plan development and outcomes; and

(H) Family satisfaction information.

(c) GENERAL FINANCIAL POLICIES AND PRACTICES. The CDDP must:

(A) Maintain up-to-date accounting records consistent with generally accepted accounting principles that accurately reflect all in-home support revenue by source, all expenses by object of expense, and all assets, liabilities, and equities; and

(B) Develop and implement written statements of policy and procedure as are necessary and useful to assure compliance with any Department administrative rule pertaining to fraud and embezzlement.

(d) RECORDS RETENTION. Records must be retained in accordance with OAR chapter 166, division 150, Secretary of State, Archives Division.

(A) Financial records, supporting documents, statistical records, and all other records (except service records) must be retained for a minimum of three years after the close of the contract period, or until audited.

(B) Service records must be kept for a minimum of seven years.

(3) RIGHTS OF THE CHILD.

(a) The rights of the child are described in OAR 411-318-0010.

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(b) Upon enrollment, request, and annually thereafter, the individual rights described in OAR 411-318-0010 must be provided to the parent and the child.

## (4) COMPLAINTS.

(a) Complaints must be addressed in accordance with OAR 411-318-0015.

(b) Upon enrollment, request, and annually thereafter, the policy and procedures for complaints as described in OAR 411-318-0015 must be explained and provided to the parent of each child.

(5) NOTIFICATION OF PLANNED ACTION. In the event services are involuntarily 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.

## (6) HEARINGS.

(a) Hearings must be addressed in accordance with ORS chapter 183 and OAR 411-318-0025.

(b) The parent of a child may request a hearing as provided in ORS chapter 183 and OAR 411-318-0025 for involuntary denials, reductions, suspensions, or terminations.

(c) Upon enrollment, request, and annually thereafter, a notice of hearing rights and the policy and procedures for hearings as described in OAR chapter 411, division 318 must be explained and provided to the parent of each child.

(7) OTHER OPERATING POLICIES AND PROCEDURES. The CDDP 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 CDDP to accomplish its objectives and to meet the requirements of these rules and other applicable standards and rules.

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

### 411-308-0050

#### Financial Limits of In-Home Support

(1) In any plan year, support must be limited to the amount of support determined to be necessary by a functional needs assessment and specified in a child's ISP.

(2) For a child who is not Medicaid eligible, support must be limited to:

(a) The amount of support determined to be necessary to prevent out-of-home placement, specified in the child's Annual Plan and may not exceed the maximum allowable monthly plan amount published in the Department's rate guidelines in any month during the plan year;

(b) The amount of time necessary for a child to transition into a waiver or Community First Choice services, if eligible.

(3) Payment rates used to establish the limits of financial assistance for specific service in the child's Annual Plan must be based on the Department's rate guidelines for costs of frequently-used services. Department rate guidelines notwithstanding, final costs may not exceed local usual and customary charges for these services as evidenced by the CDDP's own documentation.

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

### 411-308-0060

#### Eligibility for In-Home Support

(1) STANDARD ELIGIBILITY. In order to be eligible for in-home support, a child must:

(a) Be under the age of 18;

(b) Be receiving OHP Plus;

(c) Be determined eligible for developmental disability services by the CDDP of the child's county of residence as described in OAR 411-320-0080; and

(d) After completion of an assessment, meet the level of care as defined in OAR 411-308-0020.

(2) CRISIS ELIGIBILITY. When the standard eligibility criteria described in section (1) of this rule are not met, the CDDP of a child's county of residence may find a child eligible for in-home support when the child:

(a) Is experiencing a crisis as defined in OAR 411-308-0020 and may be safely served in the family home;

(b) Has exhausted all appropriate alternative resources, including but not limited to natural supports and family support as defined in OAR 411-305-0020;

(c) Does not receive or may stop receiving other Department-paid in-home or community living services other than Medicaid state plan personal care services, adoption assistance, or short-term assistance, including crisis services provided to prevent out-of-home placement; and

(d) Is at risk of out-of-home placement and requires in-home support to be maintained in the family home; or

(e) Resides in a Department-paid residential service and requires in-home support to return to the family home.

(3) CONCURRENT ELIGIBILITY. Children are not eligible for in-home support from more than one CDDP unless the concurrent service:

(a) Is necessary to transition from one county to another with a change of residence;

(b) Is part of a collaborative plan developed by both CDDPs; and

(c) Does not duplicate services and expenditures.

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

### 411-308-0070

#### In-Home Support Entry, Duration, and Exit

(1) ENTRY. An eligible child may enter in-home support when in-home support needs are assessed through a functional needs assessment. In-home supports must be authorized on an annual basis, prior to the beginning of a new ISP or Annual Plan.

(2) DURATION OF SERVICES. Once a child has entered in-home support, the child and the child's family may continue receiving in-home supports from the CDDP until the child turns 18. The child must remain eligible for in-home support and in-home support funds must be available at the CDDP and authorized by the Department to continue services. The child's ISP or Annual Plan must be developed each year and kept current.

(3) CHANGE OF COUNTY OF RESIDENCE. If a child and the child's family move outside the CDDP's area of service, the originating CDDP must arrange for services purchased with in-home support funds to continue, to the extent possible, in the new county of residence. The originating CDDP must:

(a) Provide information about the need to apply for services in the new CDDP and assist the family with application for services if necessary; and

(b) Contact the new CDDP to negotiate the date on which the in-home support, including responsibility for payments, transfers to the new CDDP.

(4) EXIT. A child must leave a CDDP's in-home support:

(a) When the child no longer resides in the family home;

(b) At the written request of the child's parent or guardian to end the in-home supports;

(c) For a child eligible via Crisis Eligibility, in-home supports are no longer necessary to prevent out-of-home placement and the child is not eligible via Standard Eligibility.

(d) On the child's 18th birthday;

(e) When the child and the child's family moves to a county outside the CDDP's area of service, unless transition services have been previously arranged and authorized by the CDDP as required in section (3) of this rule; or

(f) No less than 30 days after the CDDP has served written notice, in the language used by the family, of intent to terminate services because:

(A) The child's family either cannot be located or has not responded to repeated attempts by CDDP staff to complete the child's ISP or Annual Plan development and monitoring activities and does not respond to the notice of intent to terminate; or

(B) The CDDP has sufficient evidence that the child's family has engaged in fraud or misrepresentation, failed to use resources as agreed upon in the child's ISP or Annual Plan, refused to cooperate with documenting expenses, or otherwise knowingly misused public funds associated with in-home support.

(g) Any child being exited from in-home support services must be given written notice of the intent to terminate service consistent with OAR chapter 411, division 318.

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.

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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

## 411-308-0080

### Required In-Home Support Services

(1) The CDDP must provide an annual planning process to assist families in establishing outcomes, determining needs, planning for supports, and reviewing and redesigning support strategies for all children eligible for in-home support. The planning process must occur in a manner that:

(a) Identifies and applies existing abilities, relationships, and resources while strengthening naturally occurring opportunities for support at home and in the community;

(b) Is consistent in both style and setting with the child's and the child's family's needs and preferences, including but not limited to informal interviews, informal observations in home and community settings, or formally structured meetings; and

(c) Includes completing a functional needs assessment using a person-centered planning approach.

(2) The CDDP, the child (as appropriate), and the child's family must develop a written ISP or Annual Plan for the child as a result of the planning process prior to purchasing supports with in-home support funds and annually thereafter. The child's ISP or Annual Plan must include but not be limited to:

(a) The eligible child's legal name and the name of the child's parent (if different than the child's last name) or the name of the child's guardian;

(b) A description of the supports required, including the reason the support is necessary. The description must be consistent with the needs identified in the functional needs assessment;

(c) Beginning and end dates of the plan year as well as when specific activities and supports are to begin and end;

(d) A list of personal, community, and public resources that are available to the child and how the resources may be applied to provide the required supports. Sources of support may include waiver services, state plan services, general funds, or natural supports;

(e) Signatures of the child's services coordinator, the child's parent or guardian, and the child (as appropriate); and

(f) The schedule of the child's ISP or Annual Plan reviews.

(g) If accessing services through crisis eligibility, a plan to reduce the need for In Home Supports, which may include assisting the child to access waiver or Community First Choice services, if eligible.

(3) The ISP must also include the following:

(a) Projected costs with sufficient detail to support estimates;

(b) The manner in which services are delivered and the frequency of services;

(c) Service providers;

(d) The child's strengths and preferences;

(e) Individually identified goals and desired outcomes;

(f) The services and supports (paid and unpaid) to assist the child to achieve identified goals and the providers of the services and supports, including voluntarily provided natural supports;

(g) The risk factors and the measures in place to minimize the risk factors, including back-up plans;

(h) The identity of the person responsible for case management and monitoring the ISP or Annual Plan; and

(i) A provision to prevent unnecessary or inappropriate care.

(4) The child's ISP or Annual Plan, or records supporting development of each child's ISP or Annual Plan, must include evidence that:

(a) When the child is not Medicaid eligible, in-home support 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 in-home support 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 child's 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 child's family to recognize and report abuse.

(5) The services coordinator must obtain and attach a Nursing Care Plan to the child's written ISP or Annual Plan when in-home supports are

used to purchase care and services requiring the education and training of a nurse.

(6) The services coordinator must obtain and attach a Behavior Support Plan to the child's written ISP or Annual Plan when the Behavior Support Plan is implemented by the child's family or providers during the plan year.

(7) In-home supports may only be provided after the child's ISP or Annual Plan is developed as described in this rule, authorized by the CDDP, and signed by the child's parent or guardian.

(8) The services coordinator must review and reconcile receipts and records of purchased supports authorized by the child's ISP or Annual Plan and subsequent ISP or Annual Plan documents, at least quarterly during the plan year.

(9) At least annually, the services coordinator must conduct and document reviews of the child's ISP or Annual Plan and resources with the child's family as follows:

(a) Evaluate progress toward achieving the purposes of the child's ISP or Annual Plan;

(b) Record actual in-home support fund costs;

(c) Note effectiveness of purchases based on services coordinator observation as well as family satisfaction;

(d) Determine whether changing needs or availability of other resources have altered the need for specific supports or continued use of in-home supports; and

(e) For children who meet the crisis eligibility under OAR 411-308-0060(2), a review of the child's continued risk for out-of-home placement and the availability of alternate resources, including eligibility for waiver and Community First Choice services.

(10) When the eligible child and the child's family moves to a county outside the area of service, the originating CDDP must assist in-home support recipients by:

(a) Continuing in-home supports authorized by the child's 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 child's 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

## 411-308-0100

### Conditions for In-Home Support Purchases

(1) A CDDP must only use in-home support funds to assist families to purchase supports for the purpose defined in OAR 411-308-0010 and in accordance with the child's ISP or Annual Plan that meets the requirements for development and content in OAR 411-308-0080.

(2) The CDDP must arrange for supports purchased with in-home support funds to be provided:

(a) In settings and under purchasing arrangements and conditions that enable the family to receive supports and services from another qualified provider;

(b) 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 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.

(c) In accordance with applicable state and federal wage and hour regulations in the case of personal services, training, and supervision;

(d) In accordance with applicable state or local building codes in the case of environmental accessibility adaptations to the family home;

(e) In accordance with Oregon Board of Nursing rules in OAR chapter 851 when services involve performance of nursing services or delegation, teaching, and assignment of nursing tasks; and

(f) In accordance with OAR 411-308-0130 governing provider qualifications.

(3) When in-home support funds are used to purchase services, training, supervision, or other personal assistance for children, 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 child's parent or guardian, or any other person specified by the child's parent or guardian, of

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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) In-home support 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 family or any other source.

(B) The provider must bill all third party resources before using in-home support funds.

(d) The provisions of section (6) of this rule regarding sanctions that may be imposed on providers;

(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 child's parent or guardian.

(a) Support expenses must be separately projected, tracked, and expensed, including separate contracts, employment agreements, and time-keeping for staff working with more than one eligible child.

(b) The CDDP is specifically prohibited from reimbursement of families for expenses or advancing funds to families to obtain services. The CDDP must issue payment, or arrange through fiscal intermediary services to issue payment, directly to the qualified provider on behalf of the family after approved services described in the child's 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 in-home support funds. During development of a child's 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

## 411-308-0120

### Supports Purchased with In-Home Support Funds

(1) For an initial or annual ISP, when conditions of purchase are met and provided purchases are not prohibited under OAR 411-308-0110, in-home support funds may be used to purchase a combination of the following supports based upon the needs of the child consistent with the child's functional needs assessment, ISP, and available funding:

(a) 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 accessibility adaptations 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. Individuals who are eligible for OSIPM and meet Level of Care may access Community First Choice Services and the following services.

(A) Family training as described in section (13) of this rule;

(B) Case management as defined in OAR 411-320-0020;

(C) Environmental Safety Modifications as described in section (14) of this rule;

(D) Vehicle modifications as described in section (15) of this rule; and

(E) Specialized Medical Supplies as described in section (16) of this rule.

(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 caregiv-

er or a services coordinator. Positive behavior support services are used to allow 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's primary caregiver to identify:

(i) Areas of a child's family home life that are of most concern for the child and the child's parent;

(ii) The formal or informal responses the child's family or the provider has used in those areas; and

(iii) The unique characteristics of the child's 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 being 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, etc.) 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 child's primary caregiver and the provider to help the child use acceptable, alternative actions to meet the child's needs in the most cost effective manner. These strategies may include changes in the physical and social environment, developing effective communication, and appropriate responses by a primary caregiver and a provider to the early warning signs.

(i) When interventions in behavior are necessary, the interventions must be done in accordance with positive behavioral theory and practice as defined in OAR 411-308-0010.

(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 child's family.

(D) Develop emergency and crisis procedures to be used to keep the child and the child's primary caregiver and the provider safe. When interventions in the behavior of the child are necessary, positive, preventative, non-aversive interventions that conform to the Oregon Intervention System 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;

(E) Develop a written Behavior Support Plan using clear, concrete language that is understandable to the child's primary caregiver and the provider that describes the assessment, strategies, and procedures to be used;

(F) Teach the child's 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, 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;

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- (B) Care coordination;
- (C) Monitoring;
- (D) Delegation and training of nursing tasks to a provider and primary caregiver;

(E) Teaching and education of the parent and provider and identifying supports that minimize health risks while promoting the autonomy of a child and self-management of healthcare; and

(F) 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 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 very six months or sooner if a change in a medical condition requires an update to the Nursing Service Plan.

(4) ENVIRONMENTAL ACCESSIBILITY ADAPTATIONS. Environmental accessibility adaptations are physical adaptations to a child's family home that are necessary to ensure the health, welfare, and safety of the child in the family home due to the child's intellectual or developmental disability or that are necessary to enable the child to function with greater independence around the family home and in family activities.

(a) Environmental accessibility adaptations include but are not limited to:

(A) An environmental modification consultation to determine the appropriate type of adaptation to ensure the health, welfare, and safety of the child;

(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) Sound and visual monitoring systems;

(H) Installation of ramps, grab-bars, and electric door openers;

(I) Adaptation of kitchen cabinets and sinks;

(J) Widening of doorways;

(K) Handrails;

(L) Modification of bathroom facilities;

(M) Individual room air conditioners for a child whose temperature sensitivity issues create behaviors or medical conditions that put the child or others at risk;

(N) Installation of non-skid surfaces;

(O) Overhead track systems to assist with lifting or transferring;

(P) Specialized electric and plumbing systems that are necessary to accommodate the medical equipment and supplies necessary for the welfare of the child; and

(Q) Adaptations to control lights, heat, stove, etc.

(b) Environmental accessibility adaptations exclude:

(A) Adaptations or improvements to the child's family home that are of general utility and are not for the direct safety, remedial, or long term benefit to the child;

(B) Adaptations that add to the total square footage of the child's family home; and

(C) General repair or maintenance and upkeep required for the child's family home, including repair of damage caused by the child.

(D) Adaptations outside of the family home, except for ramps that attach to the family home for the purpose of entering and exiting the family home.

(c) Environmental accessibility adaptations are limited to \$5,000 per modification. A services coordinator may request approval for additional expenditures through the Department prior to expenditure. Approval is based on the service needs and goals of the child and the determination by the Department of appropriateness and cost-effectiveness.

(d) Environmental accessibility adaptations must be tied to supporting ADL, IADL, and health-related tasks as identified in the ISP.

(e) Environmental accessibility adaptations must be completed by a state licensed contractor. 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 accessibility adaptations 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) Environmental accessibility adaptations that are provided in a rental structure must be authorized in writing by the owner of the rental structure prior to initiation of the work. This does not preclude any reasonable accommodations required under the Americans with Disabilities Act.

(5) ATTENDANT CARE. Attendant care services include the purchase of direct provider support provided to a child in the child's family home or community by qualified independent provider 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 child's family in their primary caregiver role, and be based on the identified needs of the child. A child's primary caregiver is expected to be present or available during the provision of attendant care.

(a) 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 a child 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 a child or adjusting padding for physical comfort or pressure relief, or encouraging or assisting with range-of-motion exercises;

(D) Nutrition — preparing meals and special diets, 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;

(E) Medication and medical equipment — assisting with ordering, organizing, and administering medications (including pills, drops, ointments, creams, injections, inhalers, and suppositories), monitoring a child for choking while taking medications, assisting with the administration of medications, maintaining equipment, or monitoring for adequate medication supply;

(F) Delegated nursing tasks;

(G) Cognitive assistance or emotional support provided to a child due to an intellectual or developmental disability — helping the child cope with change and assisting the child with decision-making, reassurance, orientation, memory, or other cognitive functions;

(H) Assistance with necessary medical appointments - help scheduling appointments, arranging medical transportation services, accompaniment to appointments, follow up from appointments, or assistance with mobility, transfers, or cognition in getting to and from appointments;

(I) Observation of the status of a child and reporting of significant changes to a physician, health care professional, or other appropriate person; and

(J) First aid and handling emergencies — addressing medical incidents related to the conditions of a child, such as seizure, aspiration, constipation, or dehydration or responding to the call of the child for help during an emergent situation or for unscheduled needs requiring immediate response.

(b) IADL services include, but are not limited to:

(A) Light housekeeping tasks necessary to maintain a child in a healthy and safe environment — cleaning surfaces and floors, making the child'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) Social support in the community around socialization and participation in the community;

(i) Support with socialization — assisting a child in acquiring, retaining, and improving self-awareness and self-control, social responsiveness, social amenities, and interpersonal skills;

(ii) Support with community participation assisting a child in acquiring, retaining, and improving skills to use available community resources, facilities, or businesses; and

(D) Support with communication - assisting a child in acquiring, retaining, and improving expressive and receptive skills in verbal and non-

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verbal language and the functional application of acquired reading and writing skills.

(c) Assistance with ADLs and IADLs 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 of the IADL tasks described in subsection (b) of this section.

(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.

(d) Attendant care services must:

(A) Be previously 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.

(e) Attendant care services exclude:

(A) Hours that supplant parental responsibilities, other natural supports, and services available from the child's 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 other family members;

(E) 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;

(F) Services provided by the child's family; and

(G) Home schooling.

(f) Attendant care services may not be provided on a 24-hour shift-staffing basis.

(6) **SKILLS TRAINING.** Skills training is specifically tied to the functional needs assessment and ISP and is a means for an individual to acquire, maintain, or enhance independence in supports otherwise provided through state plan or waiver services.

(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, the services coordinator must reassess the use of skills training with the individual.

(d) Skills training does not replace the responsibilities of the school system.

(7) **RELIEF CARE.**

(a) Relief care includes two types of care, neither of which may be characterized as daily or periodic services.

(A) Twenty-four hour relief care must be provided in segments of 24-hour units that may be sequential but may not exceed seven consecutive days without permission from the Department.

(B) Hourly relief care is substitute care for the care provided by the primary caregiver.

(b) Relief care may include both day and overnight services that may be provided in:

(A) The family home;

(B) A setting licensed or certified by the Department;

(C) The home of a provider. If overnight relief care is provided in the home of a provider, the services coordinator and the parent must document that the home of the provider 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 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 7 consecutive overnight stays;

(C) For more than 10 days per individual plan year when provided at a camp;

(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 be purchased with In home support for children funds when the intellectual or developmental disability of a child 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 section (a) of this rule must be of direct benefit to the child and may include:

(A) Electronic 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.

(i) Expenditures for electronic devices are limited to \$500 per plan year.

(ii) A services coordinator may request approval for additional expenditures through the Department prior to expenditure.

(B) Assistive devices not covered by other Medicaid programs to assist and enhance the independence of a child in performing ADLs or IADLs, such as durable medical equipment, mechanical apparatus, or electronic devices.

(i) Expenditures for assistive devices are limited to \$5,000 per plan year. A services coordinator may request approval for additional expenditures through the Department prior to expenditure.

(ii) Any single device or assistance costing more than \$500 must be approved by the Department prior to expenditure.

(c) Assistive devices may include the cost of a professional consultation if required to assess, identify, adapt, or fit specialized equipment. The cost of professional consultation may be included in the purchase price.

(d) To be authorized by a services coordinator, assistive devices must be:

(A) Not covered by the Medicaid State Plan, OHP and private insurance;

(B) Determined necessary to the daily functions of a child; and

(C) Directly related to the disability of a child.

(e) Assistive devices exclude:

(A) Items that are not necessary or of direct medical or remedial benefit to the child;

(B) Items intended to supplant similar items furnished under OHP or private insurance;

(C) Items available through the family, community, or other governmental resources;

(D) Items that are considered unsafe for a child;

(E) Toys or outdoor play equipment; and

(F) Equipment and furnishings of general household use.

(f) Funding for assistive devices with an expected life of more than one year is one time funding that is not continued in subsequent plan years. Assistive devices may only be included in an ISP when all other public and private resources have been exhausted.

(g) A services coordinator must secure use of assistive devices costing more than \$500 through a written agreement between the Department and the parent that specifies the time period the item is to be available to the child and the responsibilities of all parties if the item is lost, damaged, or sold within that time period. The Department may immediately recover any assistive devices purchased with In home support for children funds that are not used according to the ISP for the child or according to the written agreement between the Department and the parent.

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(h) Assistive devices must meet applicable standards of manufacture, design, and installation.

### (9) ASSISTIVE TECHNOLOGY.

(a) Assistive technology includes, but is not limited to, motion or sound sensors, two-way communication systems, automatic faucets and soap dispensers, incontinent and fall sensors, or other electronic backup systems.

(A) Expenditures for assistive technology are limited to \$5,000 per plan year. A services coordinator may request approval for additional expenditures through the Department prior to expenditure.

(B) Any single device or assistance costing more than \$500 must be approved by the Department prior to expenditure.

(b) Assistive technology may include the cost of a professional consultation if required to assess, identify, adapt, or fit specialized equipment. The cost of professional consultation may be included in the purchase price.

(c) To be authorized by a services coordinator, assistive technology must be:

(A) Not covered by the Medicaid State Plan, OHP and private insurance;

(B) Determined necessary to the daily functions of a child; and

(C) Directly related to the disability of a child.

(d) Assistive technology excludes:

(A) Items that are not necessary or of direct medical or remedial benefit to the child;

(B) Items intended to supplant similar items furnished under OHP or private insurance;

(C) Items available through the family, community, or other governmental resources;

(D) Items that are considered unsafe for a child; and

(E) Equipment and furnishings of general household use.

(e) Funding for assistive technology with an expected life of more than one year is one time funding that is not continued in subsequent plan years. Assistive technology may only be included in an ISP when all other public and private resources have been exhausted.

(f) A services coordinator must secure use of assistive technology costing more than \$500 through a written agreement between the Department and the parent that specifies the time period the item is to be available to the child and the responsibilities of all parties if the item is lost, damaged, or sold within that time period. The Department may immediately recover any assistive technology purchased with In home support for children funds that is not used according to the ISP of the child or according to the written agreement between the Department and the parent.

(g) Assistive technology must meet applicable standards of manufacture, design, and installation.

(10) CHORE SERVICES. Chore services may be provided only in situations where no one else in the family home is able of either performing or paying for the services and no other relative, caregiver, landlord, community, volunteer agency, or third-party payer is capable of, or responsible for, providing these 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 services include, but are 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, or a health related task as identified in an ISP; or

(C) Assistance with the purchase of a bus pass.

(b) Mileage reimbursement is limited to the geographic area surrounding the family home that is commonly used by people in the same area to obtain goods and services. The geographic area is not determined by the social or recreational groups or activities of a child.

(c) Community transportation excludes:

(A) Transportation provided by family members;

(B) Transportation used for behavioral intervention or calming;

(C) Transportation normally provided by schools;

(D) Transportation normally provided by a primary caregiver for a child of similar age without disabilities;

(E) Transportation to obtain medical or non-medical items that may be delivered by a supplier or sent by mail order without cost;

(F) Purchase or lease of a vehicle;

(G) Routine vehicle maintenance and repair;

(H) Reimbursement for out-of-state travel expenses;

(I) Ambulance services or medical transportation;

(J) Transportation services that may be obtained through other means, such as OHP or other public or private resources available to the child; and

(K) Costs for transporting a person other than the child.

(d) Community transportation services 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 identified by the functional needs assessment, prior authorized by the services coordinator and documented in the ISP.

### (12) TRANSITION COSTS.

(a) Transition costs are limited to individuals transitioning from a nursing facility, ICF/IDD, or acute care hospital to a home or community-based setting where the individual resides.

(b) Transition costs are based on an individual's assessed need 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 Department's approval is based on the individual's need and the Department's determination 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) 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) Registration fees in excess of \$500 per family for an individual event;

(II) Travel, food, and lodging expenses;

(III) Services otherwise provided under OHP or available through other resources; or

(IV) Costs for individual family members who are employed to care for the child.

(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.

### (14) ENVIRONMENTAL SAFETY ADAPTATIONS

(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:

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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

- (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, remedial, or long term benefit to the child; and

(D) Adaptations that add to the total square footage of the family home.

(d) Environmental safety modifications are limited to \$5,000 per modification. A services coordinator may request approval for additional expenditures through the Department prior to expenditure. Approval is based on the service needs and goals of the child and the determination by the Department of appropriateness and cost-effectiveness.

(e) Environmental safety modifications must be tied to supporting ADL, IADL, and health-related tasks as identified in the ISP.

(f) Environmental safety modifications must be completed by a state licensed contractor. 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) Environmental safety modifications that are provided in a rental structure must be authorized in writing by the owner of the rental structure prior to initiation of the work. This does not preclude any reasonable accommodations required under the Americans with Disabilities Act.

## (15) 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 or remedial benefit to a child;

(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 may request approval for additional expenditures through the Department prior to expenditure. Approval is based on the service needs and goals of the child and the determination by the Department of appropriateness and cost-effectiveness.

(d) Vehicle modifications must meet applicable standards of manufacture, design, and installation.

(16) SPECIALIZED MEDICAL SUPPLIES. Specialized medical supplies do not cover services which are otherwise available to a child under section 110 of the Rehabilitation Act of 1973, or the IDEA (20 U.S.C. 1401 et seq.). Specialized medical supplies may not overlap with, supplant, or duplicate other services provided through the waiver, OHP or Medicaid state plan services.

(17) 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 occurs that prevents the primary caregiver from providing services as documented by a physician; 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, has been trained in behavior management and that all other feasible recommendations from the behavior consultant and the services coordinator have been implemented.

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.

## 411-308-0130

### Standards for Providers Paid with In-Home Support Funds

Independent providers, provider organizations, and general business providers paid with in-home support funds must be qualified. At the discretion of the Department, providers who have previously been terminated or suspended by the Department or Oregon Health Authority may not be authorized as providers of service. Providers must meet the following qualifications:

(1) PERSONAL SUPPORT WORKER QUALIFICATIONS. Each personal support worker must meet the qualifications described in OAR chapter 411, division 375.

(2) Each 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 a background check completed by the Department in accordance with OAR 407-007-0200 to 407-007-0370. A subject individual as defined in 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's 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 personal support worker enrollment.

(B) Background check approval is effective for two years from the date a personal support worker is hired or contracted with to provide in-home services, except in the following circumstances:

(i) Based on possible criminal activity or other allegations against the personal support worker, 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 personal support worker.

(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 a 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 on the child's ISP or Annual Plan, with such demonstration confirmed in writing by the child's parent or guardian, 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 child; and

(D) Training of a nature and type sufficient to ensure that the provider has knowledge of emergency procedures specific to the child being cared for;

(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 Office of Inspector General's list of excluded or debarred providers (<http://exclusions.oig.hhs.gov/>); and

(j) If transporting the child, have a valid driver's license 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.

(k) Sign a Medicaid provider agreement and be enrolled as a Medicaid provider prior to delivery of any services.

(3) Section (1)(c) of this rule does not apply to employees of a parent, 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.

(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 Department's designee within 24 hours.

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(5) Nursing consultants must have a current Oregon nursing license and submit a resume to the CDDP indicating the education, skills, and abilities necessary to provide nursing services in accordance with state law.

(6) Behavior consultants may include but are not limited to autism specialists, licensed psychologists, or other behavioral specialists who:

(a) Have education, skills, and abilities necessary to provide behavior consultation services, including knowledge and experience in developing plans based on positive behavioral theory and practice;

(b) Have received at least two days of training in the Oregon Intervention System and have a current certificate; and

(c) Submit a resume 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 experience with individuals who present difficult or dangerous behaviors and at least one year of that experience must include providing the services of a behavior consultant.

(7) PROVIDER ORGANIZATIONS WITH CURRENT LICENSE OR CERTIFICATION. A provider organization certified, licensed, and endorsed under OAR chapter 411, division 325 for 24-hour residential services, or licensed under OAR chapter 411, division 360 for adult foster homes, or certified and endorsed under OAR chapter 411, division 345 for employment and alternatives to employment services or OAR 411-328-0550 to 411-328-0830 for supported living services, may not require additional certification as an organization to provide relief care, attendant care, skill 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 that all people directed by the provider organization as employees, contractors, or volunteers to provide services paid for with in home funds meet the standards for qualification of independent providers described in OAR 411-308-0130 Sections 2, 3, 4, 5, and 6.

(8) General business providers must hold any current license appropriate to function required by Oregon and federal laws and regulation. Services purchased with in-home support funds must be limited to those within the scope of the general business provider's license. Such licenses 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 accessibility adaptations 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 vendors and medical supply companies providing assistive devices, a current retail business license, including enrollment as Medicaid providers through the Division of Medical Assistance Programs if vending medical equipment; and

(f) A current business license for providers of personal emergency response systems.

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

## 411-308-0135

### Standards for Employers

(1) EMPLOYEE — EMPLOYER RELATIONSHIP. The relationship between an independent provider and a parent, or a person selected by the parent to act on the behalf of the parent to provide the employer responsibilities described in section (4)(a) of this rule, is that of employee and employer.

(a) A personal support worker who is not an independent contractor must have an employer of record. The Department may not act as the employer of record.

(b) Independent providers, including personal support workers, are not state, CDDP, or brokerage employees.

(2) JOB DESCRIPTION. The employer must create and maintain a job description for an independent provider that is in coordination with the services authorized in the ISP.

(3) BENEFITS. Only personal support workers qualify for benefits. The benefits provided to personal support workers are described in OAR chapter 411, division 375.

(4) EMPLOYER RESPONSIBILITIES.

(a) For a child to be eligible for In home support for children provided by an employed personal support worker an employer must demonstrate the ability to:

(A) Locate, screen, and hire a qualified independent provider;

(B) Supervise and train the independent provider;

(C) Schedule work, leave, and coverage;

(D) Track the hours worked and verify the authorized hours completed by the independent provider;

(E) Recognize, discuss, and attempt to correct, with the independent provider, any performance deficiencies and provide appropriate, progressive, disciplinary action as needed; and

(F) Discharge an unsatisfactory independent provider.

(b) Indicators that an employer may not be meeting the employer responsibilities described in subsection (a) of this section include, but are not limited to:

(A) Independent provider complaints;

(B) Multiple complaints from an independent provider requiring intervention from the Department;

(C) Frequent errors on time sheets, mileage logs, or other required documents submitted for payment that results in repeated coaching from the Department;

(D) Complaints to Medicaid Fraud involving the employer; or

(E) Documented observation by the Department of services not being delivered as identified in an ISP.

(c) The Department may require intervention as defined in OAR 411-300-0110 when an employer has demonstrated difficulty meeting the employer responsibilities described in subsection (a) of this section.

(d) A child may not receive In Home Support for Children services provided by an independent provider if, after appropriate intervention and assistance, an employer is not able to meet the employer responsibilities described in subsection (a) of this section. (e) The child may receive In Home Support for Children services provided by a provider organization or general business provider, when available.

(5) DESIGNATION OF EMPLOYER RESPONSIBILITIES.

(a) A parent not able to meet all of the employer responsibilities described in section (4)(a) of this rule must:

(A) Designate an employer representative in order for the child to receive or continue to receive In home support for children provided by an independent provider; or

(B) Select a provider organization or general business provider to provide In home support for children.

(b) A parent able to demonstrate the ability to meet some of the employer responsibilities described in section (4)(a) of this rule must:

(A) Designate an employer representative to fulfill the responsibilities the parent is not able to meet in order for the child to receive or continue to receive In home support for children provided by an independent provider; and

(B) On a Department approved form, document the specific employer responsibilities to be performed by the parent and the employer responsibilities to be performed by the employer representative.

(c) When an employer representative is not able to meet the employer responsibilities described in section (4)(a) or the qualifications in section (6)(c) of this rule, the parent must:

(A) Designate a different employer representative in order for the child to receive or continue to receive In home support for children provided by an independent provider; or

(B) Select a provider organization or general business provider to provide In home support for children.

(6) EMPLOYER REPRESENTATIVE.

(a) A parent may designate an employer representative to act on behalf of the parent to meet the employer responsibilities described in section (4)(a) of this rule.

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(b) If an independent provider is selected by the parent to act as the employer, the parent must seek an alternate employer for purposes of the employment of the independent provider. The alternate employer must:

(A) Track the hours worked and verify the authorized hours completed by the independent provider; and

(B) Document the specific employer responsibilities performed by the employer on a Department approved form.

(c) The Department may suspend, terminate, or deny a request for an employer representative if the requested employer representative has:

(A) A founded report of child abuse or substantiated abuse;

(B) Participated in billing excessive or fraudulent charges; or

(C) Failed to meet the employer responsibilities in section (4)(a) or (6)(b) of this rule, including previous termination as a result of failing to meet the employer responsibilities in section (4)(a) or (6)(b).

(d) If the Department suspends, terminates, or denies a request for an employer representative for the reasons described in subsection (c) of this section, the parent may select another employer representative.

(7) NOTICE.

(a) The Department shall mail a notice to the parent when:

(A) The Department denies, suspends, or terminates an employer from performing the employer responsibilities described in sections (4)(a) or (6)(b) of this rule; and

(B) The Department denies, suspends, or terminates an employer representative from performing the employer responsibilities described in section (4)(a) or (6)(b) of this rule because the employer representative does not meet the qualifications in section (6)(c) of this rule.

(b) If the parent does not agree with the action taken by the Department, the parent may request an administrator review.

(A) The request for an administrator review must be made in writing and received by the Department within 45 days from the date of the notice.

(B) The determination of the Director is issued in writing within 30 days from the date the written request for an administrator review was received by the Department.

(C) The determination of the Director is the final response from the Department.

(c) The hearing rights described in OAR chapter 411, division 318 apply when a denial, suspension, or termination of an employer results in the Department denying, suspending, or terminating a child from In home support for children.

Stat. Auth.: ORS 409.050, 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662-670

Hist.: APD 21-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14

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**Rule Caption:** Definitions, Individual Rights, Notification of Planned Action, Complaints, and Hearings for Developmental Disability Services

**Adm. Order No.:** APD 22-2014(Temp)

**Filed with Sec. of State:** 7-1-2014

**Certified to be Effective:** 7-1-14 thru 12-28-14

**Notice Publication Date:**

**Rules Adopted:** 411-317-0000, 411-318-0000, 411-318-0005, 411-318-0010, 411-318-0015, 411-318-0020, 411-318-0025, 411-318-0030

**Subject:** In response to the Department of Human Services (Department) transformation efforts, and the need to streamline operations to provide consistency across developmental disability services, the Department is adopting OAR 411-317-0000 to create a general definition rule and rules in OAR chapter 411, division 318 to provide a uniform complaints and hearings process with clear requirements for notification of planned action. Additionally, the rules in OAR chapter 411, division 318 promote the rights of individuals receiving developmental disability services in accordance with Senate Bill 22 (2013 Regular Session).

Specifically, the rules in OAR chapter 411, division 318 address:

- The rights of individuals receiving developmental disability services;

- The process for reporting and investigating a complaint with a developmental disability service or service provider;

- The requirements for notification in the event a developmental disability service is involuntarily denied, reduced, suspended, or terminated or voluntarily reduced, suspended, or terminated;

- The contested case hearing process for challenging a denial, reduction, suspension, or termination of a developmental disability service; and

- The contested case hearing process for challenging service provider notice of an involuntary transfer or exit.

With the adoption of OAR 411-317-0000 and the rules in OAR chapter 411, division 318, the Department is able to immediately update the rules for developmental disability services in OAR chapter 411 to include uniform definitions, a uniform complaints and hearings process, clear requirements for notification of planned action, and to promote individual rights.

Rules Coordinator: Kimberly Colkitt-Hallman—(503) 945-6398

## 411-317-0000

### Definitions for Developmental Disability Services

Unless the context indicates otherwise, the following definitions apply to the rules in OAR chapter 411, divisions 300 to 375:

(1) "Abuse Investigation and Protective Services" 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 407-045-0310.

(2) "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.

(3) "Activities of Daily Living (ADL)" are the basic personal everyday activities, such as eating, using the restroom, grooming, dressing, bathing, and transferring.

(4) "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.

(5) "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.

(6) "Case Management" means the functions performed by a services coordinator or personal agent. Case management includes determining service eligibility, developing a plan of authorized services, and monitoring the effectiveness of services and supports.

(7) "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.

(8) "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. Personal outcomes, goals, and activities are supported in the context of balancing the rights, risks, and personal choices of the individual. Individuals are supported in opportunities to make changes when so expressed. Choice may be communicated orally, through sign language, or by other communication methods.

(9) "Community First Choice (K Plan)" means the state plan amendment authorized under section 1915(k) of the Social Security Act.

(10) "Day" means a calendar day unless otherwise specified in these rules.

(11) "Family Member" means husband or wife, 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.

(12) "Founded Reports" 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.

(13) "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,

# ADMINISTRATIVE RULES

respiratory therapist (RT), physical therapist (PT), physician assistant (PA), dentist, or occupational therapist (OT).

(14) "Home and Community-Based Waiver Services" mean the services approved by the Centers for Medicare and Medicaid Services in accordance with section 1915(c) and 1115 of the Social Security Act.

(15) "Independence" means the extent to which an individual exerts control and choice over his or her own life.

(16) "Instrumental Activities of Daily Living (IADL)" mean the activities other than activities of daily living required to continue independent living such as:

- (a) Meal planning and preparation;
  - (b) Budgeting;
  - (c) Shopping for food, clothing, and other essential items;
  - (d) Performing essential household chores;
  - (e) Communicating by phone or other media; and
  - (f) Participating in the community.
- (17) "Integration" as defined in ORS 427.005 means:

(a) The 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 an intellectual or developmental disability participate, together with regular contact with people without an intellectual or developmental disability; and

(c) Individuals with intellectual or developmental disabilities reside in homes or home-like settings that are in proximity to community resources and foster contact with people in the community.

(18) "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.

(19) "Monitoring" means the periodic review of the implementation of services and supports identified in an Individual Support Plan and the quality of services delivered by other organizations.

(20) "Natural Supports" means the voluntary resources available to an individual from the relatives, friends, significant others, neighbors, roommates, and the community of the individual that are not paid for by the Department.

(21) "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.

(22) "Person-Centered Planning":

(a) Means a timely and formal or informal process that is driven by an individual, includes people chosen by the individual, ensures that the individual directs the process to the maximum extent possible, and that the individual is enabled to make informed choices and decisions consistent with CFR 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, service providers, 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.

(23) "Prescription Medication" means any medication that requires a prescription from a physician before the medication may be obtained from a pharmacist.

(24) "PRN (pro re nata)" means the administration of a medication to an individual on an 'as needed' basis.

(25) "Productivity" as defined in ORS 427.005 means:

(a) Engagement in income-producing work by an individual that is measured through improvements in income level, employment status, or job advancement; or

(b) Engagement by an individual in work contributing to a household or community.

(26) "Protection" means the necessary actions taken as soon as possible to prevent subsequent abuse or exploitation of an individual, to prevent self-destructive acts, or to safeguard the person, property, and funds of the individual.

(27) "Protective Services" mean the necessary actions taken as soon as possible to prevent subsequent abuse or exploitation of an individual, to

prevent self-destructive acts, or to safeguard the person, property, and funds of the individual.

(28) "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.

(29) "Significant Other" means a person selected by an individual to be the friend of the individual.

(30) "Support" means the assistance that an individual requires, solely because of the affects of an intellectual or developmental disability, to maintain or increase independence, achieve community presence and participation, and improve productivity. Support is subject to change with time and circumstances.

(31) "Volunteer" means any person assisting a provider without pay to support the services and supports provided to an individual.

(32) "Waiver Services" mean the services approved by the Centers for Medicare and Medicaid Services in accordance with section 1915(c) and 1115 of the Social Security Act.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 409.05

Hist.: APD 22-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14

## 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 service provider;

(c) The requirements for notification in the event a developmental disability service is involuntarily denied, reduced, suspended, or terminated or voluntarily reduced, suspended, or terminated and the contested case hearing process for challenging an involuntary denial, reduction, suspension, or termination of a developmental disability service; and

(d) The contested case hearing process for challenging an involuntary transfer or exit.

(2) The rules in OAR chapter 411, division 318 apply to the developmental disability services described in:

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

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

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

(d) OAR chapter 411, division 320 for community developmental disability programs;

(e) OAR chapter 411, division 323 for developmental disability certification and endorsement;

(f) OAR chapter 411, division 325 for 24-hour residential services for children and adults with intellectual or developmental disabilities;

(g) OAR chapter 411, division 328 for supported living services for adults with intellectual or developmental disabilities;

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

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

(j) OAR chapter 411, division 345 for employment and day support activities for adults with intellectual or developmental disabilities;

(k) OAR chapter 411, division 346 for foster homes for children with intellectual or developmental disabilities;

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

(m) OAR chapter 411, division 355 for the Medically Involved Children's Program; and

(n) OAR chapter 411, division 360 for adult foster homes for individuals 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

## 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:

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- (1) "Abuse" means:
- For a child:
  - "Abuse" as defined in ORS 419B.005; and
  - "Abuse" as defined in OAR 407-045-0260 when a child resides in a 24-hour comprehensive residential home licensed by the Department to provide services as described in OAR chapter 411, division 325.
- (b) For an adult, "abuse" as defined in OAR 407-045-0260.
- (2) "Adult" means an individual who is 18 years or older with an intellectual or developmental disability.
- (3) "CDDP" means "Community Developmental Disability Program" as defined in OAR 411-320-0020.
- (4) "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.
- (5) "Child" means an individual who is less than 18 years of age that has a provisional determination of an intellectual or developmental disability.
- (6) "CIIS" means "Children's Intensive In-Home Services". CIIS include the services described in:
- OAR chapter 411, division 300 for the Children's Intensive In-Home Services, Behavior Program;
  - OAR chapter 411, division 350 for the Medically Fragile Children's Services Program; or
  - OAR chapter 411, division 355 for the Medically Involved Children's Program.
- (7) "Claimant" means the individual directly impacted by the action that is the subject of a hearing request.
- (8) "Complaint" means an oral or written expression of dissatisfaction with a developmental disability service or service provider.
- (9) "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.
- (10) "Complaint Log" means the list of complaint-related information that is completed and maintained by a local program.
- (11) "Continuing Services" means the continuation of a developmental disability service, following the request for a hearing until a final order is issued.
- (12) "DD Administrative Hearing Request Form" means form SDS 0443DD.
- (13) "DD Administrative Hearing Request Form for an Involuntary Transfer or Exit" means form SDS 0719DD. This form is part of the AFH/DD Mandatory Written Notice of Exit or Transfer.
- (14) "Denial" means the written rejection of a request for a developmental disability service or an increase in a developmental disability service.
- (15) "Department" means the Department of Human Services.
- (16) "Department Hearing Representative" means the person authorized by the Department to represent the Department in a hearing, as described in OAR 411-001-0500.
- (17) "Department Staff" means a 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.
- (18) "Developmental Disability Services" mean the services listed in OAR 411-318-0000 provided to a child or an adult with an intellectual or developmental disability.
- (19) "Director" means the Director of the Department of Human Services, Office of Developmental Disability Services, or the designee of the Director, which may include Department Staff.
- (20) "Exit" means termination or discontinuance of a Department-funded developmental disability service by a Department licensed or certified service provider.
- (21) "Family Member" means husband or wife, 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.
- (22) "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.
- (23) "Guardian" means the parent of a minor child, or a person or agency appointed and authorized by a court to make decisions about developmental disability services for a child or an adult.
- (24) "Hearing" means a contested case hearing subject to OAR 137-003-0501 to 137-003-0700, which results in a final order.
- (25) "Individual" means an adult or a child applying for, or determined eligible for, a developmental disability service.
- (26) "Informal Conference" means the discussion held prior to a hearing between a claimant, the representative of the claimant, Department staff, and a Department representative 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.
- (27) "Informal Discussion" means the conversation between an individual or 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.
- (28) "Involuntary Transfer" means a service provider has made the decision to transfer an individual and the individual or the representative of the individual has not given prior approval.
- (29) "Legal Representative" means a person who has the legal authority to act for an individual.
- For a child, the legal representative is the parent of the child unless a court appoints another person or agency to act as the guardian of the child; and
  - For an adult, the legal representative is the attorney at law who has been retained by or for the adult, the power of attorney for the adult, or the person or agency authorized by a court to make decisions about services for the adult.
- (30) "Local Program" means the local CDDP, support services brokerage, provider organization, CIIS program, or other agency with which the Department contracts to provide developmental disability services.
- (31) "Mechanical Restraint" means any mechanical device, material, object, or equipment that is 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.
- (32) "Notification of Planned Action (form SDS 0947)" means the written decision notice issued to an individual in the event that a developmental disability service is involuntarily denied, suspended, or terminated or voluntarily reduced, suspended, or terminated.
- (33) "OAH" means the Office of Administrative Hearings.
- (34) "Person-Centered Planning":
- Means a timely and formal or informal process that is driven by an individual, includes people chosen by the individual, ensures that the individual directs the process to the maximum extent possible, and that the individual is enabled to make informed choices and decisions consistent with CFR 441.540.
  - Person-centered planning includes gathering and organizing information to reflect what is important to and for the individual and to help:
    - Determine and describe choices about personal goals, activities, services, service providers, and lifestyle preferences;
    - Design strategies and networks of support to achieve goals and a preferred lifestyle using individual strengths, relationships, and resources; and
    - Identify, use, and strengthen naturally occurring opportunities for support at home and in the community.
  - The methods for gathering information vary but all are consistent with the cultural considerations, needs, and preferences of the individual.
- (35) "Program Director" means the Director of a local program or the designee of the Director.
- (36) "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.
- (37) "Protective Physical Intervention" means any manual physical holding of or contact with an individual that restricts freedom of movement.
- (38) "Provider Organization" means an entity selected by an individual or the representative of the individual and paid with service funds that:
- Is primarily in business to provide supports for individuals with intellectual or developmental disabilities;
  - Provides supports for the individual through employees, contractors, or volunteers; and

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(c) Receives compensation to recruit, supervise, and pay the person who actually provides support for the individual.

(39) "Representative" means any adult, such as a parent, family member, guardian, legal representative, or advocate, chosen by an 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 a Department, CDDP, or support services brokerage employee acting in official capacity. An individual is not required to choose a representative.

(40) "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 service provider; or

(c) A written request for a change in a developmental disability service currently provided.

(41) "Restraint" means any physical hold, device, or chemical substance that restricts, or is meant to restrict, the movement or normal functioning of an individual.

(42) "Service" means "developmental disability services" as defined in this rule.

(43) "Service Funds" means state public funds or Medicaid funds used to purchase developmental disability services.

(44) "Service Provider" means a person or a public or private community agency or organization that provides recognized developmental disability services and is approved by the Department or other appropriate agency to provide developmental disability services.

(45) "Services Coordinator" means an employee of the Department, CDDP, 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 developmental disability services.

(46) "Support Services Brokerage" means "brokerage" as defined in OAR 411-340-0020.

(47) "These Rules" mean the rules in OAR chapter 411, division 318.

(48) "Transfer" means movement of an individual from a service site to another service site administered or operated by the same service provider.

(49) "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

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## 411-318-0010

### Individual Rights

(1) The individual rights described in this rule 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) While receiving developmental disability services, an individual has the right to:

(a) Be free and protected 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, protective physical intervention, chemical restraint, or mechanical restraint and assured that 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;

(c) 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;

(d) Informed, voluntary, written consent prior to receiving services, except in a medical emergency or as otherwise permitted by law;

(e) Informed, voluntary, written consent prior to participating in any experimental programs;

(f) A humane service environment that affords reasonable protection from harm, reasonable privacy in all matters that do not constitute a documented health and safety risk to the individual, and access and the ability to engage in private communications with any public or private rights protection program, services coordinator, CDDP representative, and others chosen by the individual, through personal visits, mail, telephone, or electronic means;

(g) Contact and visits with legal and medical professionals, legal or designated representatives, family members, friends, advocates, and others chosen by the individual, except where prohibited by court order;

(h) Participate regularly in the community and use community resources, including recreation, developmental disability services, employment and day support activities, school, educational opportunities, and health care resources;

(i) Access to a free and appropriate public education for children and adults less than 21 years of age, including a procedure for school attendance or refusal to attend.

(j) Reasonable and lawful compensation for performance of labor, except personal housekeeping duties;

(k) Manage the individual's own money and financial affairs unless the right has been taken away by court order or other legal procedure;

(l) Keep and use personal property, personal control and freedom regarding personal property, and a reasonable amount of personal storage space;

(m) Adequate food, housing, clothing, medical and health care, supportive services, and training;

(n) Seek a meaningful life by choosing from available services, service settings, and service providers consistent with the support needs of the individual identified through a functional needs assessment, and enjoying the benefits of community involvement and community integration:

(A) Services must promote independence and dignity and reflect the age and preferences of the individual; and

(B) The services must be provided in a setting and under conditions that are most cost effective and least restrictive to the liberty of the individual, least intrusive to the individual, and that provide for self-directed decision-making and control of personal affairs appropriate to the preferences, age, and identified support needs of the individual;

(o) 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;

(p) Ongoing opportunity to participate in the planning of services in a manner appropriate to the capabilities of the individual, including the right to participate in the development and periodic revision of the plan for services, the right to be provided with a reasonable explanation of all service considerations through choice advising, and the right to invite others chosen by the individual to participate in the plan for services;

(q) Request a change in the plan for services;

(r) A timely decision upon request for a change in the plan for services;

(s) Advance written notice of any action that terminates, suspends, reduces, or denies a service or request for service, and notification of other available sources for necessary continued services;

(t) A hearing to challenge an action that terminates, suspends, reduces, or denies a service or request for service;

(u) Exercise all rights set forth in ORS 426.385 and 427.031 if the individual is committed to the Department;

(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), the procedures for reporting abuse, and the procedures for filing complaints, reviews, or requests for hearings if services have been or are proposed to be terminated, suspended, reduced, or denied;

(w) Have these rights and procedures prominently posted in a location readily accessible to individuals and made available to representatives of the individual;

(x) Be encouraged and assisted in exercising all legal, civil, and human rights accorded to other citizens of the same age, except when limited by a court order;

(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; and

(z) Freedom to exercise all rights described in this rule without any form of reprisal or punishment.

(3) 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, unless specifically prohibited by law in the case of children less than 18 years of age.

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(4) An individual who is receiving developmental disability services, or as applicable a legal or designated representative of the individual, has the right under ORS 430.212 to 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.

(5) 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.

(6) Nothing in this rule may be construed to alter any legal rights and responsibilities between a parent and child.

(7) 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 the 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

## 411-318-0015

### Complaints

(1) The Department and local programs must address all complaints in accordance with their policies and procedures and these rules.

(2) An individual or the representative of the individual may file a complaint at any time. A complaint may include, but is not limited to:

(a) An expression of dissatisfaction with a developmental disability service; or

(b) An allegation of circumstances or events that are contrary to law, rule, policy, or otherwise adverse to the interests of an individual.

(3) The complaint process described in this rule does not apply to a complaint in the following situations:

(a) The complaint is filed anonymously. Anonymous complaints are reviewed by the Governor's Advocacy Office;

(b) The merits of the complaint have been, or are going to be, decided by a judge or a juvenile court ruling;

(c) The subject matter of the complaint is not related to a developmental disability service or a service provider; or

(d) The subject matter of the complaint is subject to review under the following:

(A) ORS 419B.005 to 419B.050 for child abuse reports;

(B) OAR chapter 309, division 118 for state institutions operated by the Oregon Health Authority;

(C) OAR 407-005-0025 and 407-005-0030 for discrimination against people with disabilities;

(D) OAR 407-005-0100 to 407-005-0120 for conduct of Department personnel;

(E) OAR chapter 411, division 020 for adult protective services;

(F) OAR 410-141-0260 to 410-141-0266 for Oregon Health Plan, Prepaid Health Plans;

(G) OAR 413-010-0420 for Department child welfare decisions;

(H) OAR 413-010-0700 to 413-010-0750 for child protective services dispositions;

(I) OAR 413-120-0060 for adoption placement selections; and

(J) OAR chapter 582, division 020 for vocational rehabilitation service determinations.

(4) If a complaint alleges circumstances that meet the criteria for an investigation of abuse, the allegation must be immediately reported to the appropriate protective service entity, such as the Department, CDDP, support services brokerage, CIIS, Office of Adult Abuse Prevention and Investigations, child welfare, or law enforcement.

(5) If an individual or the representative of the individual makes a complaint identified in section (3) of this rule, the local program or Department must assist the individual or the representative of the individual with filing the complaint with the appropriate entity.

(6) The local programs must have and implement written policies and procedures regarding individual complaints and the complaint process. A copy of the policies and procedures for resolving complaints must be maintained on file at the office of the local program and must be available to staff, individuals, representatives of the individuals, service providers, and

the Department. The policies and procedures must include, but are not limited to:

(a) Method and form used to submit a complaint (form SDS 0946 may be used);

(b) Process for reviewing and resolving a complaint;

(c) Time frames for responding to a complaint as set forth by this rule; and

(d) Documentation to be used in response to a complaint as set forth in this rule.

(7) COMPLAINT LOG.

(a) The local programs must maintain a complaint log. At a minimum, the complaint log must include:

(A) The name of the individual for which the complaint is being filed;

(B) The name of the person making the complaint, if known;

(C) The name of the person taking the complaint;

(D) The nature of the complaint, including if there was a request for new or changed developmental disability services which may result in a hearing;

(E) The date the complaint was received;

(F) The date the complaint was acknowledged in writing;

(G) The written outcome of the complaint; and

(H) The date that the written outcome was mailed.

(b) Complaints regarding personnel issues and allegations of abuse must be maintained separately from the complaint log. If a complaint resulted in disciplinary action against a staff member, the complaint log must include a statement that personnel action was taken.

(c) The complaint log for the local program documents only complaints pertaining to the local program.

(A) In the event that an individual or the representative of the individual has a complaint against another agency or program, the local program must assist the individual or the representative of the individual with filing the complaint against the other agency or program.

(B) The local program does not document complaints against another agency or program in the complaint log for the local program, but does document the support provided by the local program in the progress notes for the individual.

(8) SCREENING OF COMPLAINTS. The local programs must screen all complaints for potential hearing related issues. In the event that a complaint appears to allege a denial, reduction, suspension, or termination of a developmental disability service, the local program must advise the individual or the representative of the individual of the right to a hearing and assist the individual or the representative of the individual with filing a hearing request, if so desired. In the event that the individual or the representative of the individual decides to file a complaint rather than a hearing request, the decision of the individual or the representative of the individual must be documented in the file for the individual.

(9) FILING A COMPLAINT.

(a) Complaints may be made orally, in writing, or on a complaint form (SDS 0946 may be used).

(b) A complaint regarding dissatisfaction with the services of a provider organization may be filed with the Department or directly with the provider organization, support services brokerage, or CDDP.

(c) A complaint regarding dissatisfaction with the services of a support services brokerage or CDDP may be filed with the Department or directly with the support services brokerage or CDDP.

(d) A complaint regarding dissatisfaction with CIIS may be filed with the Department or directly with the CIIS program.

(e) A complaint regarding dissatisfaction with the Department must be filed with the Department.

(10) PROCESS FOR ADDRESSING COMPLAINTS.

(a) The local program or Department must provide written acknowledgement of a complaint to the individual or the representative of the individual within five working days from the receipt of the complaint.

(b) The written acknowledgement must inform the individual or the representative of the individual of the opportunity for an informal discussion.

(A) Choosing to engage in an informal discussion does not preclude the individual or the representative of the individual from pursuing a review of the complaint by the local program or Department.

(B) The informal discussion includes a conversation between the individual or the representative of the individual and the Program Director of the local program or the Director of the Department.

(C) The informal discussion must occur within 10 working days of the written acknowledgement of the complaint.

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(D) In the event that a resolution is reached during the informal discussion, the local program or Department must mail a written outcome to the individual and the representative of the individual within 10 working days of the informal discussion. A copy of the written outcome must be maintained in the file for the individual.

(c) The local program or Department must complete a review of the complaint and issue a written outcome to the individual and the representative of the individual within 45 calendar days from the receipt of the complaint, unless both parties mutually agree to extend the timeframe. The extension may not exceed an additional 45 calendar days.

(A) The review of the complaint must include, but is not limited to, an investigation and records review of the complaint by the Program Director of the local program or the Director of the Department.

(B) The written outcome of the complaint may be issued on the complaint form or may be issued in a separate document. The written outcome must include:

(i) The rationale for the outcome;

(ii) The reports, documents, and other information relied upon in deciding the outcome of the complaint, or a summary of the reports, documents, and other information relied upon;

(iii) Information about the right of the individual or the representative of the individual to review the documents relied upon in determining the outcome (FACT sheet for Complaints, Fair Hearing, Administrative Review SDS 0948); and

(iv) Information about the right of the individual or the representative of the individual to request a review of the written outcome (FACT sheet for Complaints, Fair Hearing, Administrative Review SDS 0948).

## (11) REQUEST FOR REVIEW.

(a) An individual or the representative of the individual may request a review of a written outcome issued by a local program within 30 calendar days of receiving the written outcome.

(A) If a provider organization issued the written outcome, the individual or the representative of the individual may request a review of the written outcome by:

(i) The local CDDP, support services brokerage, or CIIS program; or  
(ii) The Department.

(B) If a CDDP, support services brokerage, or CIIS program issued the written outcome, the individual or the representative of the individual may request a review of the written outcome by the Department.

(C) The written outcome issued by the Department is the final response from the Department.

(b) The local CDDP, support services brokerage, CIIS program, or Department may uphold, alter, or overturn a written outcome issued by a provider organization.

(c) The Department may uphold, alter, or overturn a written outcome issued by a provider organization, local CDDP, support services brokerage, or CIIS.

(d) The Oregon Health Authority may uphold, alter, or overturn a written outcome issued by the Department.

## (12) PROCESS FOR ADDRESSING AND RESOLVING A REQUEST FOR REVIEW.

(a) The receiving entity of a request for a review of a written outcome must acknowledge receipt of the request by issuing a written acknowledgement to the individual and the representative of the individual within five working days from the receipt of the request for a review.

(b) The written acknowledgement must inform the individual and the representative of the individual of the opportunity for an informal discussion.

(A) Choosing to engage in an informal discussion does not preclude the individual or the representative of the individual from pursuing a review of the written outcome by the receiving entity.

(B) The informal discussion includes a conversation between the individual or the representative of the individual and the Program Director of the local program or Director of the Department.

(C) The informal discussion must occur within 10 working days of the written acknowledgement of the request for a review.

(D) In the event that a resolution is reached during the informal discussion, the local program or Department must mail a written determination to the individual and the representative of the individual within 10 working days of the informal discussion. A copy of the written determination must be maintained in the file for the individual.

(c) The local program or Department must review the written outcome and issue a written determination to the individual and the representative of the individual within 45 calendar days from the receipt of the

request for a review, unless both parties mutually agree to extend the timeframe. The extension may not exceed an additional 45 calendar days.

(A) The review of the written outcome must include, but is not limited to, an investigation and records review by the Program Director of the local program or the Director of the Department.

(B) The written determination must include:

(i) The rationale for the determination;

(ii) The reports, documents, and other information relied upon in making the determination, or a summary of the reports, documents, and other information relied upon;

(iii) Information about the right of the individual or the representative of the individual to review the documents relied upon in making the determination.

Stat. Auth.: ORS 409.050, 427.107

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## 411-318-0020

### Notification of Planned Action

(1) An individual and the representative of the individual must receive a written Notification of Planned Action in the event that a developmental disability service is involuntarily denied, reduced, suspended, or terminated or voluntarily reduced, suspended, or terminated.

(2) The Notification of Planned Action must be on the form prescribed by the Department (SDS 0947). The Notification of Planned Action must include:

(a) The specific date the Notification of Planned Action is mailed or hand delivered to the individual and the representative of the individual;

(b) The effective date of the denial, reduction, suspension, or termination;

(A) For a denial of service, the effective date is the same date that the Notification of Planned Action is mailed or hand delivered to the individual and the representative of the individual.

(B) For a reduction, suspension, or termination of service, the effective date is:

(i) The end of the calendar month in which the Notification of Planned Action is mailed or hand delivered to the individual and the representative of the individual if the Notification of Planned Action is mailed or hand delivered on or before the 18th of the month; or

(ii) The end of the calendar month following the month in which the Notification of Planned Action is mailed or hand delivered to the individual and the representative of the individual if the Notification of Planned Action is mailed or hand delivered on or after the 19th of the month; or

(iii) No fewer than 10 days after the date the Notification of Planned Action is mailed or hand delivered to the individual and the representative of the individual.

(c) The specific service or unit of service to be denied, reduced, suspended, or terminated;

(d) The rationale for the denial, reduction, suspension, or termination, including a reference to the specific reports, documents, or other information relied on in making the determination;

(e) The specific sections of the rules or statutes upon which the determination is based;

(f) Notification that the documents relied upon may be reviewed by the individual or the representative of the individual; and

(g) Notification that if the individual or the representative of the individual disagrees with the determination to deny, reduce, suspend, or terminate a service, the individual has the right to request a hearing, or the representative of the individual has the right to request a hearing on the behalf of the individual, as provided in ORS chapter 183 and OAR 411-318-0025. The notification of the right to a hearing must include:

(A) The timeline for requesting a hearing;

(B) How to request a hearing;

(C) The right to receive assistance from the local program in completing and submitting a request for hearing;

(D) The right of the individual to receive continuing services at the same level until a final order has been issued;

(E) Notification of the time frame within which the individual or the representative of the individual must request continuing services;

(F) Notification of how, when, and where the individual or the representative of the individual may request continuing services; and

(G) Notification that the individual may be required to repay the Department for any continuing services received during the hearing process if the final order upholds the determination to reduce, suspend, or terminate the services.

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# ADMINISTRATIVE RULES

## 411-318-0025

### Contested Case Hearings for Reductions, Suspensions, Terminations, or Denials

(1) An individual or the representative of the individual may request a hearing, as provided in ORS chapter 183, if the individual experiences a denial, reduction, suspension, or termination of a developmental disability service or in instances when a timely Notification of Planned Action has not been provided.

#### (2) HEARING REQUESTS.

(a) The request for a hearing must be made within 90 calendar days from the date on a Notification of Planned Action.

(b) The request for a hearing may be made orally, in writing, or by completing the DD Administrative Hearing Request form (SDS 0443DD).

#### (A) ORAL HEARING REQUESTS.

(i) The individual or the representative of the individual may orally express a desire for a hearing to the local program or Department staff.

(ii) Upon receipt of an oral request for a hearing, the local program or Department staff must complete the DD Administrative Hearing Request form (SDS 0443DD) and submit the form to the Central Office of the Department within three business days of receiving the request for a hearing. A copy of the form must be mailed to the individual and the representative of the individual.

#### (B) WRITTEN HEARING REQUESTS.

(i) The individual or the representative of the individual may provide a written request for a hearing to the local program or Department staff.

(ii) Upon receipt of a written request for a hearing, the local program or Department staff must complete the DD Administrative Hearing Request form and submit the form to the Central Office of the Department within three business days of receiving the request for a hearing. A copy of the form must be mailed to the individual and the representative of the individual.

(c) The Department processes late hearing requests as described in OAR 411-001-0520.

#### (3) CONTINUING SERVICES PENDING A FINAL ORDER.

(a) In the event of a reduction, suspension, or termination of a developmental disability service, a claimant or the representative of the claimant may request continuing services for the claimant during the hearing process.

(b) To receive continuing services, a claimant or the representative of the claimant must either:

(A) Request a hearing within 10 days of the date in which a Notification of Planned Action is received; or

(B) Request a hearing and continuing services by the effective date of the Notification of Planned Action, or 10 working days following the date the Notification of Planned Action was issued, whichever is later.

(c) A claimant or the representative of the claimant may request continuing services by:

(A) Communicating orally or in writing to the local program or to the Department the desire for the services for the claimant to remain the same during the hearing process;

(B) Requesting a hearing within 10 days of the date in which a Notification of Planned Action is received; or

(C) Marking the appropriate box on the DD Administrative Hearing Request form (SDS 0443DD).

(d) The Department grants a late request for continuing services when the Department determines a claimant or the representative of a claimant has good cause for the late request.

(e) The claimant may be required to pay back any benefits received during the hearing process if the final order is not in the favor of the claimant.

#### (4) INFORMAL CONFERENCE.

(a) The Department staff, Department representative, and the claimant or the representative of the claimant may have an informal conference, without the presence of an administrative law judge, to discuss the action that is the subject of the hearing request. An informal conference may also be used to:

(A) Provide an opportunity for the Department and the claimant or the representative of the claimant to settle the matter;

(B) Ensure the claimant or the representative of the claimant understands the reason for the action that is the subject of the hearing request;

(C) Give the claimant or representative of the claimant an opportunity to review the information that is the basis for the action that is the subject of the hearing request;

(D) Inform the claimant or the representative of the claimant of the rules that serve as the basis for the action that is the subject of the hearing request;

(E) Give the Department and the claimant or the representative of the claimant the chance to correct any misunderstanding of the facts;

(F) Give the claimant or the representative of the claimant an opportunity to provide additional information to the Department; and

(G) Give the Department an opportunity to review the action that is the subject of the hearing request.

(b) At any time prior to the hearing date, the claimant or the representative of the claimant may request an additional informal conference with a Department representative. At the discretion of the Department representative, the Department representative may grant an additional informal conference to facilitate the hearing process.

(c) The Department may provide a claimant the reprieve sought at any time before a final order is issued.

#### (5) REPRESENTATION.

(a) A representative may be chosen by a claimant to represent the interests of the claimant during an informal conference and hearing.

(b) Department, CDDP, and Support Services Brokerage employees are authorized to appear as a witness.

(6) HEARINGS NOT OPEN TO THE PUBLIC. Non-participants may attend a hearing only with the consent of the claimant or the representative of the claimant and the Department representative.

(7) WITHDRAWAL OF HEARING REQUEST. A claimant or the representative of a claimant may withdraw a hearing request at any time prior to the issuance of a final order. The withdrawal is effective on the date the request for the withdrawal is received by the Department or the Office of Administrative Hearings (OAH). The Department shall issue an order of withdrawal to the last known address of the claimant. The claimant or the representative of the claimant may cancel the withdrawal up to 10 working days following the date the order of withdrawal is issued.

(8) DISMISSAL FOR FAILURE TO APPEAR. A hearing request is dismissed by order when neither the claimant nor the representative of the claimant appears by phone or in person at the hearing. The dismissal order is effective on the date scheduled for the hearing. The Department may cancel the dismissal order on request of the claimant or the representative of the claimant upon a showing that the claimant or the representative of the claimant has good cause for not attending the hearing or requesting a postponement.

(9) When the Department refers a hearing under these rules to OAH, the Department shall indicate on the referral:

(a) Whether the Department is authorizing OAH to issue a final order, a proposed order, or a proposed and final order; and

(b) If the Department is establishing an earlier deadline for written exceptions and argument because the hearing request is being referred for an expedited hearing.

(10) FINAL ORDER. A final order is the final action expressed in writing by the Office of Administrative Hearings as described in OAR 137-003-0665. A final order is issued within 90 calendar days of the request for a hearing or within 90 calendar days from the receipt of a proposed order or a proposed and final order from OAH.

(11) PROPOSED ORDERS. The Department issues a final order after OAH issues a proposed order, unless the Department authorizes OAH to issue the final order under OAR 137-003-0655.

(12) PROPOSED AND FINAL ORDERS. A proposed and final order becomes a final order 21 calendar days after OAH issues a proposed and final order, unless:

(a) The claimant or the representative of the claimant has filed written exception and written argument as described in subsection (e) of this section;

(b) The Department has issued a revised order; or

(c) The Department has notified OAH and the claimant or the representative of the claimant that the Department shall issue the final order.

#### (13) EXCEPTIONS.

(a) The claimant or the representative of the claimant may file a written exception and written argument to be considered by the Department once OAH has issued either a proposed order or a proposed and final order. The written exception and written argument must be postmarked to the location indicated in the OAH order no later than 20 calendar days after service of the proposed order or proposed and final order, unless an earlier deadline has been established pursuant to subsection (a)(B) of this section.

(b) When the Department receives a timely written exception and written argument as described above, the Department shall issue the final

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order, unless the Department authorizes OAH to issue the final order in compliance with OAR 137-003-0655.

(14) PETITION OF FINAL ORDER. A claimant or the representative of the claimant may file a petition for reconsideration or rehearing up to 60 calendar days after a final order is served. The petition must be filed with the entity that issued the final order, unless stated otherwise on the final order.

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

## 411-318-0030

### Contested Case Hearings for Provider Notices of Involuntary Transfers or Exits

(1) An individual must be given the opportunity to dispute an involuntary transfer or exit by requesting a hearing as provided in ORS chapter 183. An individual or the representative of the individual may request a hearing either orally or in writing when the individual and the representative of the individual receives a notice of involuntary transfer or exit.

(a) To request a hearing in writing:

(A) The individual or the representative of the individual must complete the DD Administrative Hearing Request form for an involuntary transfer or exit (SDS 0719DD) and submit the form to the Central Office of the Department for processing as described on the form; or

(B) The individual or the representative of the individual must meet with a staff person of the local program or Department to complete the DD Administrative Hearing Request form for an involuntary transfer or exit. After meeting with the individual or the representative of the individual the local program or Department must submit the form to the Central Office of the Department within three business days. A copy of the form must be mailed to the individual and the representative of the individual.

(b) To request a hearing orally, the individual or the representative of the individual must orally express the desire for a hearing to a staff person of the local program or Department. Upon receipt of an oral request for a hearing, the local program or Department must complete the DD Administrative Hearing Request form for an involuntary transfer or exit and submit the form to the Central Office of the Department within three business days. A copy of the form must be mailed to the individual and the representative of the individual.

(2) Upon receipt of the DD Administrative Hearing Request form for an involuntary transfer or exit, the Central Office of the Department must:

(a) Refer the hearing request to OAH within five business days from the receipt of the hearing request;

(b) Assist the claimant or the representative of the claimant in gathering and submitting exhibits; and

(c) Act as liaison between OAH and the CDDP or support services brokerage responsible for the services of the claimant.

(3) OAH communicates directly with the claimant and the representative of the claimant regarding informal conference dates, hearing dates, and the final order as defined in OAR 137-003-0070.

(4) If an individual or the representative of an individual requests a hearing prior to the effective date of the action reported on the notice of an involuntary transfer or exit, the individual must receive the same services until receipt of the final order.

(5) When an individual has been given less than 30 days advanced written notice of an involuntary transfer or exit due to a medical emergency or because the individual is engaging in behavior that poses an imminent danger to self or others, and the individual or the representative of the individual has requested a hearing as described in this rule, the service provider must reserve the room for the individual until receipt of the final order.

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

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**Rule Caption:** Community Developmental Disability Programs

**Adm. Order No.:** APD 23-2014(Temp)

**Filed with Sec. of State:** 7-1-2014

**Certified to be Effective:** 7-1-14 thru 12-28-14

**Notice Publication Date:**

**Rules Amended:** 411-320-0020, 411-320-0040, 411-320-0060, 411-320-0080, 411-320-0090, 411-320-0100, 411-320-0110, 411-320-0120, 411-320-0130, 411-320-0170, 411-320-0175

**Subject:** The Department of Human Services (Department) is immediately amending the rules in OAR chapter 411, division 320 for Community Developmental Disability Programs (CDDPs).

OAR 411-320-0020 is being amended to align the definitions with ORS 427.005, clarify adaptive behavior and adaptive behavior assessments, incorporate the general definitions in OAR 411-317-0000, update the definitions to reflect correct terminology, and include definitions for terms created by the temporary rulemaking.

OAR 411-320-0040 is being amended to adjust to the adoption of OAR 411-318-0015 by recognizing its authority regarding service delivery complaints.

OAR 411-320-0060 is being amended to implement Senate Bill 22 by updating the rights of individuals.

OAR 411-320-0080 is being amended to modify and clarify eligibility for developmental disability services to provide clear direction to eligibility specialists and mirror federal regulations and statutory intent. Specifically, the rule changes:

- Clarify adaptive behavior, the adaptive behavior assessments that may be used to determine developmental disability eligibility and level of care, and who may perform an adaptive behavior assessment;

- Clarify intellectual disability, and the documentation required if an individual is not able to participate in an intellectual functioning assessment due to profound intellectual disability;

- Specify that a General Abilities Index score may be used in place of a Full Scale IQ in the event a qualified professional determines the General Abilities Index score is more valid than the Full Scale IQ;

- Include "motor impairment" in the list of conditions, diagnoses, or syndromes for which adaptive impairment may not be primarily attributed to;

- Clarify developmental disability, including specifying that "other developmental disability" may not be a motor impairment; and

- Clarify determinations for children less than 7 years of age, including using a physician's statement only if a formal assessment is not available and using the school aged requirements to determine eligibility for children who are at least 5 years of age and who have had school aged testing completed.

OAR 411-320-0090 is being amended to correct language associated with financial eligibility for services and to bring the rule into closer compliance with the Community First Choice1915(k) state plan by:

- Recognizing that assistance with OSIPM and OHP Plus are appropriately identified as case management services; and

- Eliminating certain timeframes for activities that are not able to be accomplished as currently written. The changes will allow for greater flexibility in meeting the overall expectations for timely access to services.

OAR 411-320-0100 is being amended to adjust to the adoption of 411-318-0080 by recognizing its authority in issuing Notices of Planned Action.

OAR 411-320-0110 is being amended to require that appropriate placement setting options are offered prior to entry and transfer as described in ORS 427.121.

OAR 411-320-0120 is being amended to assure compliance with the Community First Choice 1915(k) state plan by:

- Assuring a Level of Care determination is completed;

- Assuring a functional needs assessment is completed; and

- Assuring federal requirements associated with person centered planning occurs consistent with CFR 441.540.

OAR 411-320-0120 also is being amended to incorporate the requirement for individuals of working age to have a Career Development Plan attached to their Individual Support Plan.

OAR 411-320-0130 is being amended to come into compliance with case management monitoring requirements found in the Community First Choice1915(k) state plan by requiring a case management contact at least once every three months.

OAR 411-320-0170 and 411-320-0175 are being amended to adjust to the adoption of 411-318-0080 by recognizing its authority regarding individual complaints.

**Rules Coordinator:** Kimberly Colkitt-Hallman—(503) 945-6398

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## 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) "24-Hour Residential Program" means a comprehensive residential home licensed by the Department under ORS 443.410 to provide residential care and training to individuals with intellectual or developmental disabilities.

(2) "ABAS" means Adaptive Behavior Assessment System.

(3) "ABES" means Adaptive Behavior Evaluation Scale.

(4) "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 home certified, endorsed, and licensed to provide 24-hour residential services as described in OAR chapter 411, division 325.

(b) For an adult, "abuse" as defined in OAR 407-045-0260.

(5) "Abuse Investigation and Protective Services" 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 407-045-0310.

(6) "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 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.

(7) "Adult" means an individual 18 years or older with an intellectual or developmental disability.

(8) "Annual Plan" means the written summary a services coordinator completes for an individual who is not enrolled in waiver or Community First Choice services. An Annual Plan is not an ISP and is not a plan of care for Medicaid purposes.

(9) "Background Check" means a criminal records check and abuse check as defined in OAR 407-007-0210.

(10) "Behavior Support Plan" means the written strategy based on person-centered planning and a functional assessment that outlines specific instructions for a provider to follow to cause the challenging behaviors of an individual to become unnecessary and to change the behavior of the provider, adjust environment, and teach new skills.

(11) "Behavior Support" means 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 ADL, IADL, health related tasks, and cognitive supports to mitigate behavior. Behavior support services are provided in the home or community.

(12) "Brokerage" means "brokerage" as defined in OAR 411-340-0020.

(13) "Care" means "services" as defined in this rule.

(14) "Career Development Plan" means the part of an ISP that identifies the employment goals and objectives for an individual, the services and supports needed to achieve those goals, the people, agencies, and providers assigned to assist the individual to attain those goals, the obstacles to the individual working in an individualized job in an integrated employment setting, and the services and supports necessary to overcome those obstacles.

(15) "Case Management" means the functions performed by a services coordinator or personal agent. Case management includes determining service eligibility, developing a plan of authorized services, and monitoring the effectiveness of services and supports.

(16) "Case Management Contact" means a reciprocal interaction between a services coordinator and an individual or the legal or designated representative of the individual (as applicable).

(17) "CDDP" means "community developmental disability program". A CDDP is the entity that is responsible for plan authorization, delivery, and monitoring of services for individuals with intellectual or developmental disabilities in a specific geographic service area of the state under a contract with the Department, LMHA, or other entity as contracted by the Department.

(18) "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.

(19) "Child" means an individual who is less than 18 years of age that has a provisional determination of an intellectual or developmental disability.

(20) "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, service providers, services, and service settings. Personal outcomes, goals, and activities are supported in the context of balancing the rights, risks, and personal choices of the individual. Individuals are supported in opportunities to make changes when so expressed. Choice may be communicated orally, through sign language, or by other communication methods.

(21) "Choice Advising" means the impartial sharing of information about case management and other service delivery options available to individuals with intellectual or developmental disabilities provided by a person that meets the qualifications in OAR 411-320-0030(4)(c).

(22) "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.

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- (23) "CMS" means Centers for Medicare and Medicaid Services.
- (24) "Community First Choice (K Plan)" means the state plan amendment authorized under section 1915(k) of the Social Security Act.
- (25) "Complaint" means "complaint" as defined in OAR 411-318-0005.
- (26) "Complaint Investigation" means "complaint investigation" as defined in OAR 411-318-0005.
- (27) "Composite Score" means the score identified by an assessment of adaptive behavior as described in the definition for "adaptive behavior".
- (28) "Comprehensive Services" means developmental disability services and supports that include 24-hour residential services provided in a licensed home, foster home, or through a supported living program. Comprehensive services are regulated by the Department alone or in combination with an associated Department-regulated employment or day support activities program. Comprehensive services are in-home services provided to an individual with an intellectual or developmental disability when the individual receives case management services from a CDDP. Comprehensive services do not include support services for adults with intellectual or developmental disabilities enrolled in brokerages.
- (29) "County of Origin" means:
- For an adult, the county of residence for the adult; and
  - For a child, the county where the jurisdiction of the guardianship of the child exists.
- (30) "Crisis" means:
- 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
  - Risk factors described in OAR 411-320-0160(2) are present for which no appropriate alternative resources are available.
- (31) "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 services.
- (32) "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.
- (33) "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 assessment, educational records, medical assessments related to the intellectual or developmental disability of an individual, psychological evaluations, and assessments of adaptive behavior.
- (34) "Day Support Activities" means "day support activities" as defined in OAR 411-345-0020.
- (35) "Department" means the Department of Human Services.
- (36) "Designated Representative" means any adult, such as a parent, family member, guardian, advocate, or other person authorized in writing by an individual to serve as the representative of the individual in connection with the provision of funded supports, who is not also a paid service provider for the individual. An individual is not required to appoint a designated representative.
- (37) "Developmental Disability (DD)" means a neurological condition that:
- Originates before an individual is 22 years of age or 18 years of age for an intellectual disability;
  - Originates in and directly affects the brain and has continued, or is expected to continue, indefinitely;
  - Constitutes significant impairment in adaptive behavior as diagnosed and measured by a qualified professional as described in OAR 411-320-0080;
  - 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
  - Requires training and support similar to an individual with an intellectual disability as described in OAR 411-320-0080.
- (38) "Director" means the director of the Department of Human Services, Office of Developmental Disability Services or the designee of the Director.
- (39) "Domain Score" means the score identified by an assessment of adaptive behavior as described in the definition for "adaptive behavior".
- (40) "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.
- (41) "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.
- (42) "Entry" means admission to a Department-funded developmental disability service.
- (43) "Exit" means termination or discontinuance of a Department-funded developmental disability service by a Department licensed or certified provider.
- (44) "Founded Reports" 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.
- (45) "Functional Needs Assessment":
- Means the comprehensive assessment or re-assessment that:
    - Documents physical, mental, and social functioning; and
    - Identifies risk factors, choices and preferences, service and support needs, strengths, and goals.
  - The functional needs assessment may be the Adult Needs Assessment (ANA) or Child Needs Assessment (CNA) or other Department approved assessment.
    - The Department incorporates Version B of the ANA dated July 1, 2014 into these rules by this reference. The ANA is maintained by the Department at: [www.dhs.state.or.us/spd/tools/dd/cm/ANA\\_Adult\\_In-home.xls](http://www.dhs.state.or.us/spd/tools/dd/cm/ANA_Adult_In-home.xls).
    - The Department incorporates Version B of the CNA dated July 1, 2014 into these rules by this reference. The CNA is maintained by the Department at: [www.dhs.state.or.us/spd/tools/dd/cm/CNA\\_Child\\_In-home.xls](http://www.dhs.state.or.us/spd/tools/dd/cm/CNA_Child_In-home.xls).
  - Printed copies may be obtained by calling (503) 945-6398 or writing the Department of Human Services, Developmental Disabilities, ATTN: Rule Coordinator, 500 Summer Street NE, Salem, OR 97301.
- (46) "Guardian" means a parent for an individual less than 18 years of age or a person or agency appointed and authorized by a court to make decisions about services for an individual.
- (47) "Health Care Representative" means:
- A health care representative as defined in ORS 127.505; or
  - A person who has authority to make health care decisions for an individual under the provisions of OAR chapter 411, division 365.
- (48) "Hearing" means a contested case hearing subject to OAR 137-003-0501 to 137-003-0700, which results in a final order.
- (49) "History" means, for the purposes of an eligibility determination as defined in this rule, evidence of an intellectual disability prior to 18 years of age or an other developmental disability prior to 22 years of age, including all previous assessments and medical evaluations prior to the date of eligibility determination for developmental disability services.
- (50) "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 support program site.
- (51) "Home and Community-Based Waiver Services" mean the services approved by CMS in accordance with Section 1915(c) and 1115 of the Social Security Act.
- (52) "IEP" means "Individualized Education Plan". An IEP 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.
- (53) "Imminent Risk" means:
- 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
  - A child who is in crisis and shall require out-of-home placement within 60 days without the use of crisis diversion services.
- (54) "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.
- (55) "Independence" means the extent to which an individual exerts control and choice over his or her own life.
- (56) "Individual" means an adult or a child with an intellectual or developmental disability applying for, or determined eligible for, developmental disability services.
- (57) "Informal Adaptive Behavior Assessment" means:

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(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.

(58) "Integration" as defined in ORS 427.005 means:

(a) The 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 an intellectual or developmental disability participate, together with regular contact with people without an intellectual or developmental disability; and

(c) Individuals with intellectual or developmental disabilities reside in homes or home-like settings that are in proximity to community resources and foster contact with people in the community.

(59) "Intellectual Disability (ID)" means significantly subaverage general intellectual functioning defined as full scale intelligence quotient's (IQ's) 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 full scale IQ's 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.

(60) "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.

(61) "Involuntary Transfer" means a service provider has made the decision to transfer an individual and the individual, or as applicable the legal or designated representative of the individual, has not given prior approval.

(62) "IQ" means intelligence quotient.

(63) "ISP" means "Individual Support Plan". An ISP includes the written details of the supports, activities, and resources required for an individual 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 the services and supports that are important for an individual to meet the needs of the individual identified through a functional needs assessment as well as the preferences of the individual for service providers, delivery, and frequency of the services and supports. The ISP is the plan of care for Medicaid purposes and reflects whether services are provided through a waiver, state plan, or natural supports.

(64) "ISP Team" means a team composed of an individual receiving services, the legal or designated representative of the individual (as applicable), services coordinator, and others chosen by the individual, or as applicable the legal or designated representative of the individual, such as service providers and family members.

(65) "Legal Representative":

(a) For a child means the parent of a child unless a court appoints another person or agency to act as the guardian of the child.

(b) For an adult means an attorney at law who has been retained by or for an adult individual, a power of attorney for the adult individual, or a person or agency authorized by a court to make decisions about services for an adult individual.

(66) "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.

(67) "Licensed Medical Practitioner" means any of the following licensed professionals trained to diagnose a developmental disability:

(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).

(68) "LMHA" means "local mental health authority". The LMHA 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.

(69) "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.

(70) "Mandatory Reporter":

(a) Means any public or private official as defined in OAR 407-045-0260 who:

(A) 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) 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.

(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 419B.231 is not required to report if the communication is privileged under 40.225 to 40.295.

(71) "Mechanical Restraint" means any mechanical device, material, object, or equipment that is 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.

(72) "Monitoring" means the periodic review of the implementation of services identified in an ISP or Annual Plan and the quality of services delivered by other organizations.

(73) "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.

(74) "Natural Supports" means the parental responsibilities for a child and the voluntary resources available to an individual from the relatives, friends, significant others, neighbors, roommates, and the community of the individual that are not paid for by the Department.

(75) "Nursing Service Plan" means the plan that is developed by a registered nurse based on an initial nursing assessment, reassessment, or an update made to a nursing assessment as the result of a monitoring visit.

(a) The Nursing Service Plan is specific to an individual and identifies the diagnoses and health needs of the individual and any service coordination, teaching, or delegation activities.

(b) The Nursing Service Plan is separate from the ISP and any service plans developed by other health professionals.

(76) "OAAPI" means the Department of Human Services, Office of Adult Abuse Prevention and Investigation.

(77) "OHP" means Oregon Health Plan.

(78) "OHP Plus" means only the Medicaid benefit packages provided under OAR 410-120-1210(4)(a) and (b).

(79) "OIS" means "Oregon Intervention System". OIS is the system of providing training to people who work with designated individuals to provide elements of positive behavior support and non-aversive behavior intervention. OIS uses principles of pro-active support and describes approved protective physical intervention techniques that are used to maintain health and safety.

(80) "Older Adult" means an adult at least 65 years of age.

(81) "OSIP-M" means "Oregon Supplemental Income Program-Medical" as described in OAR 461-001-0030. OSIP-M is Oregon Medicaid insurance coverage for individuals who meet the eligibility criteria described in OAR chapter 461.

(82) "Person-Centered Planning":

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(a) Means a timely and formal or informal process that is driven by an individual, includes people chosen by the individual, ensures that the individual directs the process to the maximum extent possible, and that the individual is enabled to make informed choices and decisions consistent with CFR 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, service providers, 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.

(83) "Personal Agent" means "personal agent" as defined in OAR 411-340-0020.

(84) "Physician" means a person licensed under ORS Chapter 677 to practice medicine and surgery.

(85) "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 intervention possible;

(c) Ensures that abusive or demeaning interventions are never used; and

(d) Evaluates the effectiveness of behavior interventions based on objective data.

(86) "Productivity" as defined in ORS 427.005 means:

(a) Engagement in income-producing work by an individual that is measured through improvements in income level, employment status, or job advancement; or

(b) Engagement by an individual in work contributing to a household or community.

(87) "Program" means "service provider" as defined in this rule.

(88) "Progress Note" means a written record of an action taken by a services coordinator in the provision of case management, administrative tasks, or direct services to support an individual. A progress note may also be a recording of information related to the services, support needs, or circumstances of the individual which is necessary for the effective delivery of services.

(89) "Protection" means "protective services" as defined in this rule.

(90) "Protective Physical Intervention" means any manual physical holding of, or contact with, an individual that restricts freedom of movement.

(91) "Protective Services" mean the necessary actions taken as soon as possible to prevent subsequent abuse or exploitation of an individual, to prevent self-destructive acts, or to safeguard the person, property, and funds of an individual.

(92) "Provider" means "service provider" as defined in this rule.

(93) "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.

(94) "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).

(95) "Quality Management Strategy" means the Quality Assurance Plan of the Department that includes the quality assurance strategies for the Department ([http://www.oregon.gov/DHS/spd/qa/app\\_h\\_qa.pdf](http://www.oregon.gov/DHS/spd/qa/app_h_qa.pdf)).

(96) "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 administration of funds for those services.

(97) "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.

(98) "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 supports to an individual.

(99) "Restraint" means any physical hold, device, or chemical substance that restricts, or is meant to restrict, the movement or normal functioning of an individual.

(100) "Review" means a request for reconsideration of a decision made by a service provider, CDDP, support services brokerage, or the Department.

(101) "School Aged" means the age at which an individual is old enough to attend kindergarten through high school.

(102) "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.

(103) "Sensory Impairment" means loss or impairment of sight or hearing from any cause, including involvement of the brain.

(104) "Service Element" means a funding stream to fund programs or services including, but not limited to, foster care, 24-hour residential services, case management, supported living services, support services, crisis diversion services, in-home comprehensive services, or family support services.

(105) "Service Provider" means a public or private community agency or organization that provides recognized developmental disability services and is approved by the Department, or other appropriate agency, to provide these services.

(106) "Service Record" means the combined information related to an individual in accordance with OAR 411-320-0070.

(107) "Services" mean supportive services including, but not limited to, provision of room and board, supervision, protection, and assistance in bathing, dressing, grooming, eating, management of money, transportation, or recreation.

(108) "Services Coordinator" means an employee of a CDDP 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 of an individual as defined in the Community First Choice state plan amendment.

(109) "SIB-R" means Scales of Independent Behavior-Revised.

(110) "Significantly Subaverage" means a score on a test of intellectual functioning that is two or more standard deviations below the mean for the test.

(111) "Skilled Areas" means a particular assessed score as described in the definition for "adaptive behavior".

(112) "SSI" means Supplemental Security Income.

(113) "State Plan" means Community First Choice or state plan personal care.

(114) "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.

(115) "Support" means the assistance that an individual requires, solely because of the affects of an intellectual or developmental disability, to maintain or increase independence, achieve community presence and participation, and improve productivity. Support is subject to change with time and circumstances.

(116) "Support Services" means "support services" as defined in OAR 411-340-0020.

(117) "Support Services Brokerage" means "brokerage" as defined in OAR 411-340-0020.

(118) "These Rules" mean the rules in OAR chapter 411, division 320.

(119) "Transfer" means movement of an individual from one service site to another service site administered or operated by the same service provider.

(120) "Transition Plan" means the written plan of services and supports for the period of time between the entry of an individual into a particular service and the development of an ISP for the individual. The

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Transition Plan is approved by a services coordinator 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 ISP development.

(121) "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; or

(f) A national from American Samoa or Swains Island.

(122) "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, a fire requiring the services of a fire department, an act of physical aggression, or any incident requiring an abuse investigation.

(123) "VABS" means Vineland Adaptive Behavior Scale.

(124) "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.

(125) "Waiver Services" means "home and community-based waiver services" as defined in this 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 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

## 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 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 service providers as appropriate for the needs of the individual.

(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 service 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 under an organizational structure that separates case management from other direct services for individuals. This separation may take one of the following forms:

(A) The CDDP may provide case management and subcontract for delivery of other direct services through one or more different organizations; or

(B) The CDDP may subcontract for delivery of case management through an unrelated organization and directly provide the other services or further subcontract these other direct services through 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 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.

(B) 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.

(C) 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.

(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)(A) 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)(B) 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)(C) 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)(B) and (e)(C) of this section, the CDDP must solicit other organizations to assume responsibility for delivery of these other services through a request for proposal (RFP) at least once every two years. When an RFP is issued, a copy of the RFP must be sent to the Department. The Department must be notified of the results of the solicitation, including the month and year of the next solicitation if there are no successful applicants.

(h) If the CDDP wishes to continue providing case management and other direct services without conducting a solicitation as described in subsection (g) of this section, 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.

(i) If the CDDP also operates a support services 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:

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- (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 service 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 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

## 411-320-0060

### Individual Rights

- (1) The CDDP must have and implement written policies and procedures that protect the individual rights described in section (4) of this rule.
- (2) Upon enrollment, request, and annually thereafter, the individual rights described in section (4) of this rule must be provided to an individual and the legal or designated representative of an individual.
- (3) The individual rights described in this rule 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.
- (4) While receiving developmental disability services, an individual has the right to:
  - (a) Be free and protected 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, protective physical intervention, chemical restraint, or mechanical restraint and assured that 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;

- (c) 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;

- (d) Informed, voluntary, written consent prior to receiving services, except in a medical emergency or as otherwise permitted by law;

- (e) Informed, voluntary, written consent prior to participating in any experimental programs;

- (f) A humane service environment that affords reasonable protection from harm, reasonable privacy in all matters that do not constitute a documented health and safety risk to the individual, and access and the ability to engage in private communications with any public or private rights protection program, services coordinator, CDDP representative, and others chosen by the individual, through personal visits, mail, telephone, or electronic means;

- (g) Contact and visits with legal and medical professionals, legal or designated representatives, family members, friends, advocates, and others chosen by the individual, except where prohibited by court order;

- (h) Participate regularly in the community and use community resources, including recreation, developmental disability services, employment services and day support activities, school, educational opportunities, and health care resources;

- (i) Access to a free and appropriate public education for children and adults less than 21 years of age, including a procedure for school attendance or refusal to attend.

- (j) Reasonable and lawful compensation for performance of labor, except personal housekeeping duties;

- (k) Manage the individual's own money and financial affairs unless the right has been taken away by court order or other legal procedure;

- (l) Keep and use personal property, personal control and freedom regarding personal property, and a reasonable amount of personal storage space;

- (m) Adequate food, housing, clothing, medical and health care, supportive services, and training;

- (n) Seek a meaningful life by choosing from available services, service settings, and service providers consistent with the support needs of the individual identified through a functional needs assessment, and enjoying the benefits of community involvement and community integration;

- (A) Services must promote independence and dignity and reflect the age and preferences of the individual; and

- (B) The services must be provided in a setting and under conditions that are most cost effective and least restrictive to the liberty of the individual, least intrusive to the individual, and that provide for self-directed decision-making and control of personal affairs appropriate to the preferences, age, and identified support needs of the individual;

- (o) 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;

- (p) Ongoing opportunity to participate in the planning of services in a manner appropriate to the capabilities of the individual, including the right to participate in the development and periodic revision of the plan for services, the right to be provided with a reasonable explanation of all service considerations through choice advising, and the right to invite others chosen by the individual to participate in the plan for services;

- (q) Request a change in the plan for services;

- (r) A timely decision upon request for a change in the plan for services;

- (s) Advance written notice of any action that terminates, suspends, reduces, or denies a service or request for service, and notification of other available sources for necessary continued services;

- (t) A hearing to challenge an action that terminates, suspends, reduces, or denies a service or request for service;

- (u) Exercise all rights set forth in ORS 426.385 and 427.031 if the individual is committed to the Department;

- (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), the procedures for reporting abuse, and the procedures for filing complaints, reviews, or requests for hearings if services have been or are proposed to be terminated, suspended, reduced, or denied;

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(w) Have these rights and procedures prominently posted in a location readily accessible to individuals and made available to representatives of the individual;

(x) Be encouraged and assisted in exercising all legal, civil, and human rights accorded to other citizens of the same age, except when limited by a court order;

(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; and

(z) Freedom to exercise all rights described in this rule without any form of reprisal or punishment.

(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, unless specifically prohibited by law in the case of children less than 18 years of age.

(6) An individual who is receiving developmental disability services, or as applicable a legal or designated representative of the individual, has the right under ORS 430.212 to 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.

(7) 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.

(8) Nothing in this rule may be construed to alter any legal rights and responsibilities between a parent and child.

(9) 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 the 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, 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. 12-28-13APD 23-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14

## 411-320-0080

### Application and Eligibility Determination

#### (1) APPLICATION.

(a) To apply for developmental disability services:

(A) An applicant or the legal representative of an applicant must use the Department required application, form SDS 0552, and apply in the county of origin as defined in OAR 411-320-0020;

(B) The applicant must be an U.S. citizen as defined in OAR 411-320-0020;

(C) 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; and

(D) The application must be complete, signed, and dated.

(b) 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.

(c) The date the CDDP receives the completed, signed, and dated application is the date of application for developmental disability services.

(d) Upon receipt of an application, the CDDP must give an applicant the Department required notification of hearing rights (FACT sheet for Complaints, Fair Hearing, Administrative Review SDS 0948).

(e) A new application may not be required if the file of 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 unearned income.

(A) The CDDP must refer all applicants with no unearned income to the local Medicaid office to be determined eligible for OHP Plus.

(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.

(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 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 Full Scale IQ results of 66-75, verification of an intellectual disability requires an assessment of adaptive behavior.

(C) A General Ability Index result may be used in place of a Full Scale IQ score to determine eligibility in the event that 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 may be used in the event Full scale IQ or General Ability Index results are not able to be provided by the clinical impression of a licensed psychologist.

(E) If an individual is not able to participate in an intelligence test due to profound intellectual disability, a statement of profound 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 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.

(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 qualified professional.

(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 7 YEARS OF AGE.

(a) Eligibility for children less than 7 years of age is always provisional.

(b) Eligibility determinations for children less than 7 years of age must be based on documentation that is no more than three years old.

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(A) The documentation must include:

(i) A standardized and normed early childhood assessment completed by a professional with at least a master's degree level or above and training to administer early childhood assessments that demonstrates 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) In the absence of a standardized and normed early childhood assessment, a medical statement by a licensed medical practitioner that confirms the presence of an other developmental disability that is a neurological condition or syndrome that 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 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.

(c) 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 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.

(C) Redetermination for school aged eligibility for a child who was originally determined eligible as a child less than 7 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 9th year birthdate.

(D) Redetermination for school aged eligibility for a child who was originally determined eligible as a child less than 7 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 7th year birthdate.

(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 5 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 ELIGIBILITY.

(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:

(i) Information no more than three years old for individuals less than 22 years of age; or

(ii) Information obtained after the 17th birthday of an individual for individuals 22 years of age and older.

(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; and

(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 initial 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

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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.

(b) The CDDP must process an application for developmental disability services in the following time frames:

(A) The CDDP must complete an eligibility determination and issue a notice as described in section (11) of this rule within 90 calendar days of the date that the application for services is received by the CDDP, except in the following circumstances:

(i) The CDDP may not make an eligibility determination because the individual or the legal representative of the individual fails to complete an action;

(ii) There is an emergency beyond the control of the CDDP; or

(iii) More time is needed to obtain additional records by the CDDP, the individual, or the legal representative of the individual.

(B) The process of making an eligibility determination may be extended up to 90 calendar days by mutual agreement among all parties. Mutual agreement may be in oral or written form. The CDDP must document the reason for the delay in the service record for the individual, including the type of contact made to verify the agreement of the individual or the legal representative of the individual to an extension.

(c) 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, based upon a review of the documentation used to determine eligibility, must issue written notification (notice) of the eligibility determination of the CDDP.

(a) The CDDP must send or hand deliver the notice to the individual and if applicable the legal representative of the individual within 10 working days of making the eligibility determination or 90 calendar days of receiving an application for services, whichever comes first.

(b) The notice must be on the following forms prescribed by the Department:

(A) The Notice of Eligibility Determination (SDS 5103); or

(B) The Notification of Planned Action (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

## 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 the family members of individuals 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 service 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.

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### (4) MINIMUM STANDARDS FOR CASE MANAGEMENT SERVICES.

(a) The CDDP must ensure that eligibility for services is determined 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 service provider and if applicable, include the reason the service provider preferred by the individual, or as applicable the legal or designated representative of the individual, declined to deliver services to the individual.

(c) 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.

(d) Program services must be authorized in accordance with OAR 411-320-0120.

(e) 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.

(f) If an individual loses OSIP-M 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 OSIP-M or OHP Plus eligibility was lost and whenever possible, assist the individual in becoming eligible for OSIP-M or OHP Plus again. The services coordinator must document efforts taken to assist the individual in becoming OSIP-M or OHP Plus eligible in the service record for the individual.

(g) Entry, exit, and transfers from comprehensive services must be in accordance with OAR 411-320-0110.

(h) 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.

(i) 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.

(j) Civil commitment services must be provided in accordance with ORS 427.215 to 427.306.

(k) The CDDP must describe case management and other service delivery options within the geographic service area provided by the CDDP or support services brokerage to an individual. Choice advising must begin at least 6 months before the 18th birthday of a child and must be provided to individuals 18 years and older.

(A) An individual newly determined eligible for developmental disability services must receive choice advising prior to or concurrent with the initial level of care determination for the individual.

(B) 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.

(C) Choice advising must be provided initially and at least annually thereafter. Annual choice advising must include informing the individual of the right of the individual to request access to other available services. Documentation of the discussion must be included in the service record for the individual.

(D) If an individual is not eligible for state plan or waiver services, initial and annual choice advising must also inform the individual of the right of the individual to access case management from the CDDP or a support services brokerage.

(l) 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.

(m) 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.

(n) The CDDP must ensure that 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 program 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.

(o) When appropriate, a services coordinator must facilitate referrals to nursing facilities as described in OAR 411-070-0043.

(p) 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.

(q) 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.

(r) When a services coordinator completes a level of care determination, the services coordinator must ensure that OHP Plus and OSIP-M eligible individuals are offered the choice of home and community-based waiver and state plan services, provided a notice of hearing rights (FACT sheet for Complaints, Fair Hearing, Administrative Review SDS 0948), and have a completed level of care determination that is reviewed annually or at any time there is a significant change.

(s) A services coordinator must participate in the appointment of the health care representative of an individual as described in OAR chapter 411, division 365.

(t) A services coordinator must coordinate with other state, public, and private agencies regarding services to individuals.

(u) The CDDP must ensure that a services coordinator is available to provide or arrange for comprehensive in-home supports for adults, in-home supports for children, or family supports as required to meet the support needs of eligible individuals. This includes:

(A) Identifying needs through a functional needs assessment for individuals accessing Community First Choice;

(B) Providing assistance in planning supports;

(C) Providing assistance in finding and arranging resources and supports;

(D) Providing education and technical assistance to make informed decisions about support need and direct service providers;

(E) Arranging fiscal intermediary services;

(F) Arranging employer-related supports; and

(G) 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 reason for the need for the variance could not have been reasonably anticipated by the CDDP, the CDDP has 15 working 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;



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(C) The individual is determined to be ineligible for developmental disability services in accordance with OAR 411-320-0080;

(D) The individual moves out of state or to another county in Oregon. If an individual moves to another county, developmental disability services must be referred and transferred to the new county, unless an individual requests otherwise and both the referring CDDP and the CDDP in the new county mutually agree; or

(E) Notification from the support services brokerage that an individual cannot be located after repeated attempts by letter and telephone.

(b) The CDDP retains responsibility for maintaining enrollment in the Department payment and reporting systems for individuals enrolled in support services until the responsibility is terminated as described in this section of this rule.

(5) **MANDATORY SERVICES.** An individual in developmental disability services must accept the following services:

(a) Case management provided by a services coordinator or personal agent

(b) Abuse investigations;

(c) The presence of a services coordinator, when applicable, at Department-funded program entry, exit, or transfer meetings or transition planning meetings required for entry or exit to adult services, including support services and in-home comprehensive services for adults;

(d) Monitoring of service provider programs in accordance with OAR 411-320-0130 (when applicable); and

(e) Access to the service record for the individual by the services coordinator.

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

## 411-320-0110

### Entry and Exit Requirements

(1) **ENTRY TO A DEPARTMENT-FUNDED DEVELOPMENTAL DISABILITY PROGRAM.**

(a) The Department authorizes entry into children's residential services, CIIS, and the Stabilization and Crisis Unit. A services coordinator must make referrals for entry and participate in all entry meetings for children's residential services, 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) **RESIDENTIAL PLACEMENT SETTING OPTIONS.** In accordance with ORS 427.121, a services coordinator must present at least three appropriate residential placement setting options, including at least two different types of residential settings, to an adult individual eligible to receive comprehensive services prior to the initial placement of the adult individual into comprehensive services. The services coordinator is not required to present the residential placement setting options if:

(a) The services coordinator demonstrates that three appropriate placement settings or two different types of residential settings are not available within the geographic area where the adult individual wishes to reside;

(b) The adult individual selects a placement setting option and waives the right to be presented with other residential placement setting options; or

(c) The adult individual is at imminent risk to health or safety in the current placement setting.

(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 service 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 for the 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 supports that includes when available:

(i) The results of a physical exam (if any) made within 90 days prior to the entry;

(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 for the individual;

(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 of the individual, health care representative for the individual, 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 to explain why preferences or choices of the individual cannot be honored at that time;

(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 of the individual and the information required in subsection (a) of this section is not available, the services coordinator must ensure that the service 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 service 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 the date of 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 of the individual;

(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 for no longer than 60 days after entry 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 children's residential services, CIIS, and the Stabilization and Crisis Unit.

(c) In accordance with ORS 427.121, a services coordinator must present at least three appropriate residential placement setting options, including at least two different types of residential settings, to an adult individual receiving comprehensive services prior to transferring the adult individual from one placement setting to another placement setting. The services coordinator is not required to present the residential placement setting options if:

(A) The services coordinator demonstrates that three appropriate placement settings or two different types of residential settings are not

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available within the geographic area where the adult individual wishes to reside;

(B) The adult individual selects a placement setting option and waives the right to be presented with other residential placement setting options; or

(C) The adult individual is at imminent risk to health or safety in the current placement setting.

(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 the 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, or as applicable the legal or designated representative of 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 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 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 support services 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 of an individual may find the individual eligible for support 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 support services brokerage, the individual is not enrolled in comprehensive services;

(D) At the time of initial entry to the support services 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 support service brokerage for assistance with design and management of personal supports.

(c) An eligible individual must be referred into support services within 10 days of requesting support services and selecting an available support services 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 support services brokerage staff and provide all relevant information upon request and as needed to assist support services 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, etc.;

(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

## 411-320-0120

### Service Planning

(1) PRINCIPLES FOR SERVICE PLANNING. This rule prescribes standards for the development and implementation of the ISP or Annual Plan for an individual. An ISP or Annual Plan must:

(a) Be developed using a person-centered process and in a manner that addresses issues of independence, integration, and productivity;

(b) Enhance the quality of life of the individual with intellectual or developmental disabilities; and

(c) 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 individual's rights. 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 individual's exercise of rights 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 or foster care services, 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 who will have an ISP that authorizes a comprehensive service has a level of care determination made on using a Department approved form. The ISP must be completed and authorized no later than the end of the month following the month in which the level of care determination was made.

(b) A services coordinator must assure that a level of care determination is reviewed for every individual enrolled in a comprehensive service annually within 60 days of the renewal of the ISP.

(c) A level of care determination may be made by a services coordinator or a personal agent.

(3) FUNCTIONAL NEEDS ASSESSMENT. A services coordinator must complete a functional needs assessment initially and at least annually for each individual who has an ISP. The functional needs assessment must be completed:

(a) Prior to the development of an initial ISP;

(b) Within 60 days prior to the annual renewal of an ISP; and

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(c) Within 45 days from the date an individual, or as applicable the legal or designated representative of the individual, requests a functional needs assessment.

(4) **INDIVIDUAL SUPPORT PLANS (ISP).** Individuals enrolled in waiver or Community First Choice state plan services must have an ISP.

(a) A services coordinator and ISP team must develop the ISP for an individual within 90 days of the entry of the individual into comprehensive services and at least annually thereafter.

(b) Upon the request for a new functional needs assessment by an individual, or as applicable the legal or designated representative of the individual, a services coordinator must revise the ISP for the individual as needed if a revision of the ISP is requested by the individual or the legal or designated representative of the individual (as applicable). 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) The CDDP must provide a written 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.

(d) **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. Commensurate with the level of need of the individual and the scope of services and supports, the ISP must include:

(A) The name of the individual and the name of the legal or designated representative of the individual (as applicable);

(B) A description of the supports required that is consistent with the support needs identified in the assessment of the individual, including the reason the support is necessary;

(C) The projected dates of when specific supports are to begin and end;

(D) A list of personal, community, and public resources that are available to the individual and how the resources may be applied to provide the required supports. Sources of support may include waiver services, state plan services, state general funds, or natural supports;

(E) The manner in which services are delivered and the frequency of services;

(F) Service provider type for each person responsible for providing services and supports;

(G) The setting in which the individual resides as chosen by the individual;

(H) The strengths and preferences of the individual;

(I) The clinical and support needs as identified through the assessment;

(J) Individually identified goals and desired outcomes;

(K) The services and supports (paid and unpaid) to assist the individual to achieve identified goals and the providers of the services and supports, including voluntarily provided natural supports;

(L) The risk factors and the measures in place to minimize the risk factors, including back up plans;

(M) The identity of the person responsible for case management and monitoring the ISP;

(N) A provision to prevent unnecessary or inappropriate care; and

(O) The alternative settings considered by the individual.

(e) The ISP for an individual must be finalized and agreed to in writing by the individual, the legal or designated representative of the individual (as applicable), and others invited by the individual including, but not limited to, service providers or other family members.

(f) The ISP must be understandable to the individual receiving services and supports and the people important in supporting the individual.

(g) A services coordinator must track the ISP timelines and coordinate the resolution of complaints and conflicts arising from ISP discussions.

(h) An ISP must be developed, implemented, and authorized as follows:

(A) **FOSTER CARE AND 24-HOUR RESIDENTIAL SERVICES.**

(i) A services coordinator must attend and assure that an annual ISP meeting is held for individuals receiving foster care or 24-hour residential services and any associated employment services or day support activities.

(ii) A services coordinator must conduct the ISP for an individual receiving foster care or 24-hour residential services and any associated employment services or day support activities.

(iii) If a child is in 24-hour residential services 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 foster care or 24-hour residential services is developed and updated in accordance with Department guidelines.

(B) **SUPPORTED LIVING SERVICES.** A services coordinator must ensure the development of an annual ISP for an adult receiving supported living services and any associated employment services or day support activities.

(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 the annual ISP for the individual.

(ii) The ISP for an adult receiving supported living services and any associated employment services or day support activities 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 the annual ISP for the individual.

(ii) The ISP for an individual receiving comprehensive in-home supports must be in accordance with OAR 411-330-0050.

(i) 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.

(5) **ANNUAL PLANS.** Individuals enrolled in developmental disability services not accessing waiver or 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 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 the Annual Plan for the child. The Annual Plan for a child receiving family support services must be in accordance with OAR 411-305-0080.

(6) **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 for the child. 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.

(7) **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 service providers may develop an ISP format that conforms to the rules for the service provider and provides for an integrated plan across the funded developmental disability service settings.

(8) **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 services 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.

(9) **PLAN REVIEWS.** The ISP must be reviewed and revised:

(a) No more than 30 days following a new functional needs assessment;

(b) At least every 12 months;

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(c) When the circumstances or needs of an individual change significantly; and

(d) At the request of an individual or the legal or designated representative of the individual (as applicable).

(10) **TEAM PROCESS IN SERVICE AND SUPPORT PLANNING.** This section applies to an ISP developed for an individual in comprehensive services by the individual and the ISP team for the individual.

(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 or the legal or designated representative of the individual (as applicable). 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 service provider rules. An individual, or as applicable the legal or designated representative of the 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 service 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, service 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 service 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 service 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

## 411-320-0130

### Case Management Contact, Site Visits, and Monitoring of Services

(1) **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 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 note for an individual. 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.

(2) **SITE VISITS.**

(a) The CDDP must ensure that site visits are conducted at each child or adult foster home, each 24-hour residential program, and each site for

employment services and day support activities licensed or certified and endorsed (as applicable) by the Department to serve individuals with intellectual or developmental disabilities.

(b) The CDDP must establish a quarterly schedule for site visits to each child or adult foster home and each 24-hour residential program.

(c) The CDDP must establish an annual schedule for site visits to each employment services or day support activities site. If a visit to an integrated employment site disrupts the work occurring, a mutually agreed upon location for the site visit must be arranged.

(d) The CDDP must establish an annual schedule for visits with individuals receiving supported living services. If an individual opposes a visit to his or her home, a mutually agreed upon location for the visit must be arranged.

(e) Site visits may be increased for any of the following reasons, including but not limited to:

(A) Increased certified and licensed capacity;

(B) New individuals receiving services;

(C) Newly licensed or certified and endorsed provider;

(D) An abuse investigation;

(E) A serious event;

(F) A change in the management or staff of the licensed or certified and endorsed provider;

(G) An ISP team request;

(H) Individuals receiving services are also receiving crisis diversion services; or

(I) Significant change in the functioning of an individual who receives services at the site.

(f) The CDDP must develop a procedure for the conduct of the visits to these sites.

(g) The CDDP must document site visits and provide information concerning the site visits to the Department upon request.

(h) If there are no Department-funded individuals at the site, a visit by the CDDP is not required.

(i) When a service provider is a Department-contracted and licensed, certified, and endorsed 24-hour residential program for children and the children's residential services coordinator for the Department is assigned to monitor services, the children's residential services coordinator and the CDDP shall coordinate the site visit. If the site visit is made by Department staff, Department staff shall provide the results of the site visit to the local services coordinator.

(j) The Department may conduct site visits on a more frequent basis than described in this section based on program needs.

(3) **MONITORING OF SERVICES:** A services coordinator must conduct monitoring activities using the framework described in this section.

(a) For all individuals with an authorized ISP, an ongoing review of the ISP for the individual must determine whether the actions identified by the ISP team are being implemented by the service providers and others. The review of an ISP must include an assessment of the following:

(A) Are services being provided as described in the ISP and do the services result in the achievement of the identified action plans?

(B) Are the personal, civil, and legal rights of the individual protected in accordance with these rules?

(C) Are the personal desires of the individual, and as applicable the legal or designated representative or family of the individual, addressed?

(D) Do the services provided for in the ISP continue to meet what is important to, and for, the individual?

(E) Do identified goals remain relevant and are the goals supported and being met?

(b) For an individual residing in 24-hour residential services, supported living, foster care, or receiving employment services or day support activities, the monitoring of services may be combined with the site visits described in section (1) of this rule. In addition:

(A) During a one year period, the services coordinator must review, at least once, services specific to health, safety, and behavior using questions established by the Department.

(B) A semi-annual review of the process by which an individual accesses and utilizes funds must occur using questions established by the Department. The services coordinator must determine whether financial records, bank statements, and personal spending funds are correctly reconciled and accounted for.

(i) The financial review standards for 24-hour residential services are described in OAR 411-325-0380.

(ii) The financial review standards for adult foster home services are described in OAR 411-360-0170.

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(iii) Any misuse of funds must be reported to the CDDP and the Department. The Department determines whether a referral to the Medicaid Fraud Control Unit is warranted.

(C) The services coordinator must monitor reports of serious and unusual incidents.

(c) For an individual receiving employment services, the services coordinator must also assess the progress of the individual toward a path to employment.

(d) The frequency of service monitoring must be determined by the needs of an individual. Events identified in section (1)(d) of this rule provide indicators that may potentially increase the need for service monitoring.

(e) For an individual receiving only case management services and not enrolled in any other funded developmental disability services, the services coordinator must make contact with the individual at least once annually.

(A) Whenever possible, annual contact must be made in person. If annual contact is not made in person, a progress note in the service record for the individual must document how contact was achieved.

(B) The services coordinator must document annual contact in the Annual Plan for the individual as described in OAR 411-320-0120.

(C) If the individual has any identified high-risk medical issue including, but not limited to, risk of death due to aspiration, seizures, constipation, dehydration, diabetes, or significant behavioral issues, the services coordinator must maintain contact in accordance with planned actions as described in the Annual Plan for the individual.

(D) Any follow-up activities must be documented in a progress note.

(4) MONITORING FOLLOW-UP. A services coordinator and the CDDP are responsible for ensuring the appropriate follow-up to monitoring of services, except in the instance of children in 24-hour residential services directly contracted with the Department when the Department conducts the follow-up.

(a) If the services coordinator determines that comprehensive services are not being delivered as agreed in the ISP or Annual Plan for an individual or that the service needs of an individual have changed since the last review, the services coordinator must initiate action to update the ISP or Annual Plan of the individual.

(b) If there are concerns regarding the ability of a service provider to provide services, the CDDP in consultation with the services coordinator must determine the need for technical assistance or other follow-up activities such as coordination or provision of technical assistance, referral to the CDDP manager for consultation or corrective action, requesting assistance from the Department for licensing or other administrative support, or meeting with the executive director or board of directors of the service provider.

(5) DEPARTMENT NOTIFICATION. In addition to conducting abuse or other investigations as necessary, the CDDP must notify the Department when:

(a) A service provider demonstrates substantial failure to comply with any applicable licensing, certification, or endorsement rules for Department-funded programs;

(b) The CDDP finds a serious and current threat endangering the health, safety, or welfare of individuals in a program for which an immediate action by the Department is required; or

(c) Any individual receiving Department-funded developmental disability services dies. Notification must be made to the Director of the Department within one working day of the death. Entry must be made into the Serious Event Review System according to Department guidelines.

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 27-2010(Temp), f. & cert. ef. 12-1-10 thru 5-30-11; SPD 11-2011, f. & cert. ef. 6-2-11; 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

## 411-320-0170

### Contractor Disputes

(1) When a dispute exists between a CDDP and a subcontracted service provider regarding the terms of their contract or the interpretation of administrative rule and local dispute resolution efforts have been unsuccessful, either party may request assistance from the Department in mediating the dispute.

(a) The parties must demonstrate a spirit of cooperation, mutual respect, and good faith in all aspects of the mediation process. Mediation must be conducted as follows:

(A) The party requesting mediation must send a written request to the Director of the Department, the CDDP Director, and the Executive Director of the service provider, unless other people are named as official contact people in the specific rule or contract under dispute. The request must describe the nature of the dispute and identify the specific rule or contract provisions that are central to the dispute.

(B) Department staff shall arrange the first meeting of the parties at the earliest possible date. The agenda for the first meeting shall include:

(i) Consideration of the need for services of an outside mediator. If the services of an unbiased mediator are desired, agreement shall be made on arrangements for obtaining these services;

(ii) Development of rules and procedures that shall be followed by all parties during the mediation; and

(iii) Agreement on a date by which mediation shall be completed unless extended by mutual agreement.

(C) Unless otherwise agreed to by all parties:

(i) Each party shall be responsible for the compensation and expenses of their own employees and representatives; and

(ii) Costs that benefit the group, such as services of a mediator, rental of meeting space, purchase of snack food and beverage, etc. shall be shared equally by all parties.

(b) A written statement documenting the outcome of the mediation must be prepared. This statement must consist of a brief written statement signed by all parties or separate statements from each party declaring their position on the dispute at the conclusion of the mediation process. In the absence of written statements from other parties, the Department shall prepare the final report. A final report on each mediation must be retained on file at the Department.

(2) A service provider may appeal the imposition of a disputed term or condition in the contract if the service provider believes that the contract offered by the CDDP contains terms or conditions that are not substantially similar to those established by the Department in the model contract. The appeal of the imposition of the disputed terms or conditions must be in writing and sent to the Director of the Department within 30 calendar days after the effective date of the contract requirement.

(a) A copy of the notice of appeal must be sent to the CDDP. The notice of appeal must include:

(A) A copy of the contract and any pertinent contract amendments;

(B) Identification of the specific terms that are in dispute; and

(C) A complete written explanation of the dissimilarity between terms.

(b) Upon receipt of the notice of appeal, the CDDP must suspend enforcement of compliance with any contract requirement under appeal by the service provider until the appeal process is concluded.

(c) The Director of the Department must offer to mediate a solution in accordance with the procedure outlined in sections (1)(a) and (1)(b) of this rule.

(A) If a solution cannot be mediated, the Director of the Department shall declare an impasse through written notification to all parties and immediately appoint a panel to consider arguments from both parties. The panel must include at a minimum:

(i) A representative from the Department;

(ii) A representative from another CDDP; and

(iii) A representative from another service provider organization.

(B) The panel must meet with the parties, consider the respective arguments, and send written recommendations to the Director of the Department within 45 business days after an impasse is declared, unless the Director of the Department grants an extension.

(C) If an appeal requiring panel consideration has been received from more than one contractor, the Department may organize materials and discussion in any manner deemed necessary, including combining appeals from multiple contractors, to assist the panel in understanding the issues and operating efficiently.

(D) The Director of the Department must notify all parties of his or her decision within 15 business days from the receipt of the recommendations of the panel. The decision of the Department is final. The CDDP must take immediate action to amend contracts as needed to comply with the decision.

(E) Notwithstanding section (2)(c) of this rule, the Director of the Department has the right to deny the appeal or a portion of the appeal if, upon receipt and review of the notice of appeal, the Director of the Department finds that the contract language being contested is identical to the current language in the county financial assistance agreement with the Department.

# ADMINISTRATIVE RULES

(d) The CDDP or the contractor may request an expedited appeal process that provides a temporary resolution if it can be shown that the time needed to follow procedures to reach a final resolution would cause imminent risk of serious harm to individuals or organizations.

(A) The request must be made in writing to the Director of the Department. The request must describe the potential harm and level of risk that shall be incurred by following the appeal process.

(B) The Department must notify all parties of the decision to approve an expedited appeal process within two business days.

(C) If an expedited process is approved, the Department shall notify all parties of the decision concerning the dispute within three additional business days. The decision resulting from an expedited appeal process shall be binding, but temporary, pending completion of the appeal process. All parties must act according to the temporary decision until notified of a final decision.

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. & 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 27-2010(Temp), f. & cert. ef. 12-1-10 thru 5-30-11; Administrative correction 6-28-11; 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

## 411-320-0175

### Individual Complaints, Notification of Planned Action, and Hearings

#### (1) INDIVIDUAL COMPLAINTS.

(a) The CDDP must have and implement written policies and procedures for individual complaints in accordance with OAR 411-318-0015.

(b) Complaints by or on behalf of individuals must be addressed in accordance with OAR 411-318-0015.

(c) Upon entry, request, and annually thereafter, the policy and procedures for complaints as described in OAR 411-318-0015 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 developmental disability services are involuntarily 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.

#### (3) HEARINGS.

(a) Hearings must be addressed in accordance with ORS Chapter 183 and OAR 411-318-0025.

(b) An individual, or as applicable the legal or designated representative of the individual, may request a hearing as provided in ORS chapter 183 and OAR 411-318-0025 for involuntary denials, reductions, suspensions, or terminations or 411-318-0030 for involuntary transfers or exits.

(c) Upon entry, request, and annually thereafter, a notice of hearing rights and the policy and procedures for hearings as described in OAR chapter 411, division 318 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 427.005, 427.007, 430.610, 430.620, 430.662-695

Hist.: 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 30-2011(Temp), f. 12-30-11, cert. ef. 1-1-12 thru 6-29-12; SPD 8-2012, f. 6-27-12, cert. ef. 6-30-12; SPD 6-2013, f. & cert. ef. 4-2-13; 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

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**Rule Caption:** Agency Certification and Endorsement, 24-Hour Residential Services, and Supported Living Services

**Adm. Order No.:** APD 24-2014(Temp)

**Filed with Sec. of State:** 7-1-2014

**Certified to be Effective:** 7-1-14 thru 12-28-14

**Notice Publication Date:**

**Rules Amended:** 411-323-0010, 411-323-0020, 411-323-0030, 411-323-0035, 411-323-0050, 411-323-0060, 411-323-0070, 411-325-0020, 411-325-0060, 411-325-0110, 411-325-0120, 411-325-0300, 411-325-0390, 411-325-0430, 411-325-0460, 411-328-0560, 411-328-0700, 411-328-0720, 411-328-0750, 411-328-0760, 411-328-0770, 411-328-0790

**Rules Suspended:** 411-325-0320, 411-325-0330, 411-325-0400, 411-328-0740, 411-328-0800

**Subject:** The Department of Human Services (Department) is immediately updating the rules in:

- OAR chapter 411, division 323 for agency certification and endorsement to provide program services to individuals with intellectual or developmental disabilities;

- OAR chapter 411, division 325 for 24-hour residential services for individuals with intellectual or developmental disabilities; and

- OAR chapter 411, division 328 for supported living services for individuals with intellectual or developmental disabilities.

These temporary rules:

- Update the Medicaid eligibility criteria, remove crisis eligibility requirements, and incorporate service eligibility requirements related to the transfer of assets in accordance with OAR 461-140-0210 to 461-140-0300;

- Implement Senate Bill 22 by updating the rights of individuals and providing a consistent dispute resolution process;

- Offer appropriate placement setting options upon a transfer as described in OAR 411-320-0110 and ORS 427.121;

- Incorporate the requirement for individuals of working age to have a Career Development Plan attached to their ISP, and replace references to alternatives to employment services with day support activities to align with waiver and state plan requirements;

- Align the supported living services rules for behavior support services with the rules for 24-hour residential services by updating the requirements for documenting and reporting occurrences of injury, accidents, acts of physical aggression, protective physical intervention, or unusual incidents;

- Incorporate the general definitions in OAR 411-317-0000, update the definitions to reflect correct terminology, and include definitions for terms created by the temporary rulemaking;

- Remove references to proctor care services; and

- Update provider qualifications, personnel requirements, and the administrator review process.

**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 the following community-based settings:

(a) 24-hour residential as described in OAR chapter 411, division 325;

(b) Supported living as described in OAR chapter 411, division 328;

or

(c) Employment and day support as described in OAR chapter 411, division 345.

(2) To provide person-centered services to individuals with intellectual or developmental disabilities in community-based settings, agencies must have:

(a) A certificate to provide Medicaid services in the state of Oregon as described in OAR 411-323-0030;

(b) Endorsement to provide Medicaid services 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 program services are to be delivered, a Medicaid Performing Provider Number assigned by the Department as described in OAR chapter 411, division 370.

Stat. Auth. ORS 409.050 & 410.070

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

## 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) "24-Hour Residential Services" mean the person-centered services provided in a comprehensive residential home licensed by the Department under ORS 443.410.

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- (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 home operated by an agency that is licensed to provide 24-hour residential services.
  - (b) For an adult, "abuse" as defined in OAR 407-045-0260.
- (3) "Abuse Investigation and Protective Services" 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) "Administrator Review" means the Director of the Department reviews a decision upon request, including the documentation related to the decision, and issues a determination.
- (5) "Adult" means an individual who is 18 years or older with an intellectual or developmental disability.
- (6) "Agency" means a public or private community agency or organization that is approved by the Department to provide program services.
- (7) "Applicant" means a person, agency, corporation, or governmental unit who applies for certification and endorsement to operate an agency providing program services to individuals with intellectual or developmental disabilities.
- (8) "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.
- (9) "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.
- (10) "Board of Directors" means the group of people formed to set policy and give directions to an agency designed to provide program services to individuals with intellectual or developmental disabilities. A board of directors may include local advisory boards used by multi-state organizations.
- (11) "Care" means "services" as defined in this rules.
- (12) "CDDP" means "Community Developmental Disability Program" as defined in OAR 411-320-0020.
- (13) "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.
- (14) "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.
- (15) "Child" means an individual who is less than 18 years of age that has a provisional determination of an intellectual or developmental disability.
- (16) "Choice" means the expression of preference, opportunity for, and active role of the individual in decision-making related to the selection of assessments, services, service providers, goals and activities, and verification of satisfaction with these services. Choice may be communicated orally, through sign language, or by other communication methods.
- (17) "Complaint" means "complaint" as defined in OAR 411-318-0005.
- (18) "Complaint Investigation" means "complaint investigation" as defined in OAR 411-318-0005.
- (19) "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 the endorsement or imposes additional requirements on the certified agency or program services site.
- (20) "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.
- (21) "Department" means the Department of Human Services.
- (22) "Designated Representative" means any adult, such as a parent, family member, guardian, advocate, or other person authorized in writing by an individual to serve as the representative of the individual in connection with the provision of funded supports, who is not also a paid provider

- for the individual. An individual is not required to appoint a designated representative.
- (23) "Developmental Disability" means "developmental disability" as defined in OAR 411-320-0020 and described in 411-320-0080.
- (24) "Director" means the Director of the Department or the designee of the Director.
- (25) "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.
- (26) "Executive Director" means the person designated by a board of directors or corporate owner that is responsible for the administration of program services.
- (27) "Founded Report" means the determination by the Department or Law Enforcement Authority, 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.
- (28) "Guardian" means the parent for an individual less than 18 years of age or the person or agency appointed and authorized by a court to make decisions about services for an individual.
- (29) "Independence" means the extent to which an individual with an intellectual or developmental disability exerts control and choice over his or her own life.
- (30) "Individual" means an adult or a child with an intellectual or developmental disability who receives Department-funded services in accordance with an ISP.
- (31) "Informal Conference" means the discussion held prior to a hearing between the Department and an applicant or an agency 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.
- (32) "Integration" as defined in ORS 427.005 means:
- (a) The 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 an intellectual or developmental disability participate, together with regular contact with people without an intellectual or developmental disability; and
  - (c) Individuals with intellectual or developmental disabilities reside in homes or home-like settings that are in proximity to community resources and foster contact with people in the community.
- (33) "Intellectual Disability" means "intellectual disability" as defined in OAR 411-320-0020 and described in 411-320-0080.
- (34) "ISP" means "Individual Support Plan". An ISP includes the written details of the supports, activities, and resources required for an individual to achieve and maintain personal goals and the health and safety of the individual. 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 the services and supports that are important for the individual to meet the needs of the individual identified through a functional needs assessment as well as the preferences of the individual for service 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, state plan, or natural supports.
- (35) "ISP Team" means a team composed of an individual receiving services, the legal or designated representative of the individual (as applicable), services coordinator, and others chosen by the individual, or as applicable the legal or designated representative of the individual, such as providers and family members.
- (36) "Legal Representative" means a person who has the legal authority to act for an individual.
- (a) For a child, the legal representative is the parent of the child unless a court appoints another person or agency to act as the guardian of the child.
  - (b) For an adult, the legal representative is the attorney at law who has been retained by or for the adult, the power of attorney for the adult, or the person or agency authorized by a court to make decisions about services for the adult.
- (37) "Mandatory Reporter":
- (a) Means any public or private official as defined in OAR 407-045-0260 who:
    - (A) Comes in contact with a child with or without an intellectual or developmental disability and has reasonable cause to believe the child has

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suffered abuse, or comes in contact with any person whom the public or private official has reasonable cause to believe abused a child, regardless of whether or not the knowledge of the abuse was gained in the official capacity of the public or private official.

(B) 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 an adult.

(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 419B.231 is not required to report if the communication is privileged under 40.225 to 40.295.

(38) "Mechanical Restraint" means any mechanical device, material, object, or equipment that is attached or adjacent to the body of an individual that the individual cannot easily remove or easily negotiate around and that restricts freedom of movement or access to the body of the individual.

(39) "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.

(40) "Medicaid Performing Provider Number" means the numeric identifier assigned to an entity or person by the Department following the enrollment of the entity or person 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.

(41) "OIS" means "Oregon Intervention System". OIS is the system of providing training to people who work with designated individuals to provide elements of positive behavior support and non-aversive behavior intervention. OIS uses principles of pro-active support and describes approved protective physical intervention techniques that are used to maintain health and safety.

(42) "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.

(43) "Person-Centered Planning":

(a) Means a timely and formal or informal process that is driven by an individual, includes people chosen by the individual, ensures that the individual directs the process to the maximum extent possible, and that the individual is enabled to make informed choices and decisions consistent with CFR 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, service providers, 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.

(44) "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 intervention possible;

(c) Ensures that abusive or demeaning interventions are never used; and

(d) Evaluates the effectiveness of behavior interventions based on objective data.

(45) "Productivity" as defined in ORS 427.005 means:

(a) Engagement in income-producing work by an individual that is measured through improvements in income level, employment status, or job advancement; or

(b) Engagement by an individual in work contributing to a household or community.

(46) "Program" means "agency" as defined in these rules.

(47) "Program Services" mean the person-centered services provided in a community-based setting as described in:

(a) OAR chapter 411, division 325 for 24-hour residential;

(b) OAR chapter 411, division 328 for supported living; and

(c) OAR chapter 411, division 345 for employment and day support.

(48) "Program Rules" mean the rules in:

(a) OAR chapter 411, division 325 for 24-hour residential;

(b) OAR chapter 411, division 328 for supported living; and

(c) OAR chapter 411, division 345 for employment and day support.

(49) "Protection" means necessary actions taken as soon as possible to prevent subsequent abuse or exploitation of an individual, to prevent self-destructive acts, and to safeguard the person, property, and funds of the individual.

(50) "Protective Physical Intervention" means any manual physical holding of, or contact with, an individual that restricts freedom of movement.

(51) "Provider" means "agency" as defined in this rule.

(52) "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.

(53) "Services" mean supportive services including, but not limited to, supervision, protection, and assistance in bathing, dressing, grooming, eating, management of money, transportation, or recreation. 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.

(54) "Services Coordinator" means "Services Coordinator" as defined in OAR 411-320-0020.

(55) "Staff" means a paid employee responsible for providing services to an individual whose wages are paid in part or in full with funds subcontracted with the CDDP or contracted directly through the Department.

(56) "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.

(57) "Support" means the assistance that an individual requires, solely because of the affects of an intellectual or developmental disability, to maintain or increase independence, achieve community presence and participation, and improve productivity. Support is subject to change with time and circumstances.

(58) "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.

(59) "These Rules" mean the rules in OAR chapter 411, division 323.

(60) "Unacceptable Background Check" means a check that precludes the agency from being certified or endorsed for the following reasons:

(a) The agency or any person holding 5 percent or greater ownership interest in the agency has been disqualified under OAR 407-007-0275; or

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

(61) "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

# ADMINISTRATIVE RULES

## 411-323-0030

### Certification

(1) **CERTIFICATION.** 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 five 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) All agencies providing program services as of July 1, 2011 are certified for five years unless the certification is sooner revoked or suspended.

(b) 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 program services according to an ISP; and

(C) Develop and implement operating policies and procedures required for managing an agency and delivering program services, including provisions for safeguarding individuals receiving program 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 and the corresponding program rules.

(a) The applicant must submit an application to the Department at least 90 days prior to anticipated certification. 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 the contract the agency has with the Department, 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 financial 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 five 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. 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

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condition attached to a certificate must directly relate to the risk of harm or potential risk of harm to individuals. 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.

(b) 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 program may provide services;
- (B) Restricting the total number of individuals to whom a program may provide 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 program 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.

(c) **NOTICE OF CERTIFICATE CONDITIONS.** A written notice is issued to the agency by the Department 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.

(d) **HEARING.** The agency may request a hearing in accordance with ORS chapter 183 and this rule upon receipt of written notice of certificate conditions.

(A) The agency must request a hearing in writing 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 administrator review as described in section (14) of this rule. The administrator review does not diminish the right of the agency to a hearing.

(e) 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.

(f) 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 calendar 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 individual 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 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 443.440 for 24-hour residential services, upon written notice from the Department of denial, refusal to renew, or revocation of a certificate.

(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. The request for a hearing must be in writing.

(C) **REVOCATION.**

(i) Notwithstanding subsection (ii) of this section, the agency must request a hearing in writing within 21 days from the receipt of the written notice of revocation. In addition to, or in-lieu of a hearing, the agency may request an administrator review as described in section (14) of this rule. The administrator review does not diminish the right of the agency to a hearing. The request for a hearing or administrator review must be in writing.

(ii) **24-HOUR RESIDENTIAL SERVICES.** An agency endorsed to provide 24-hour residential services as described in OAR chapter 411, division 325 must request a hearing within 10 days from the receipt of the written notice of revocation. The request for a hearing must be in writing.

(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 24-hour residential services, upon written notice from the Department of the immediate suspension of the certificate.

(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. In addition to, or in-lieu of a hearing, the agency may request an administrator review as described in section (14) of this rule. The administrator review does not diminish the right of the agency to a hearing.

(B) **24-HOUR RESIDENTIAL SERVICES.** An agency endorsed to provide 24-hour residential services 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) **ADMINISTRATOR REVIEW.**

(a) In addition to the right to a contested case hearing, an agency may request an administrator review notwithstanding subsection (b) of this section.

(b) **24-HOUR RESIDENTIAL SERVICES.** An agency endorsed to provide 24-hour residential services as described in OAR chapter 411, division 325 may not request an administrator review for revocation or suspension. An agency endorsed to provide 24-hour residential services as described in OAR chapter 411, division 325 may request an administrator review for imposition of conditions.

(c) The Department must receive a written request for an administrator 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 administrator review, any additional written materials the agency wishes to have considered during the review.

(d) The determination of the administrator review is issued in writing within 10 business days from the receipt of the written request for a 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 Department must receive a 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 administrator 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

# ADMINISTRATIVE RULES

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

## 411-323-0035

### Endorsement

(1) **ENDORSEMENT REQUIRED.** 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 program services.

(a) Endorsements are not transferable or applicable to any other program services. 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) A certified agency must report each geographic location where program services are provided 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 July 1, 2011 are endorsed for five years for the program services being provided as of July 1, 2011 unless the endorsement is sooner revoked or suspended.

(b) A certified agency intending to provide additional program services after July 1, 2011 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 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 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 program 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 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 that provide program services. 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) Additional program services are not endorsed on renewal unless specifically approved by the Department. A certified agency requesting to provide additional program services must reapply 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. 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. 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.

(b) Conditions that the Department may impose on an endorsement include, but are not limited to:

(A) Restricting the total number of individuals to whom a program may provide services;

(B) Restricting the total number of individuals to whom a program may provide 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 program 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.

(c) **NOTICE OF ENDORSEMENT CONDITIONS.** A written notice is issued to an agency by the Department when the Department imposes a condition on the endorsement of program services. The written notice of conditions includes the conditions imposed by the Department, the reason

# ADMINISTRATIVE RULES

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 condition imposed remains in effect until the Department has sufficient cause to believe the situation that warranted the condition has been remedied.

(d) HEARING. The agency may request a hearing in accordance with ORS chapter 183 and this rule upon written notice of endorsement conditions.

(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 administrator review as described in section (13) of this rule. The administrator review does not diminish the right of the agency to a hearing.

(e) 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.

(f) 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 calendar 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 program 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 individual 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 24-hour residential services, upon written notice from the Department of denial, refusal to renew, or revocation of an endorsement.

(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. In addition to, or in lieu of a hearing, an agency may request an administrator review as described in section (13) of this rule. The administrator review does not diminish the right of the agency to a hearing.

(ii) 24-HOUR RESIDENTIAL SERVICES. An agency endorsed to provide 24-hour residential services 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 443.440 for 24-hour residential services, upon written notice from the Department of the immediate suspension of the endorsement.

(A) Notwithstanding OAR subsection (B) of this section, the endorsed agency must request a hearing within 21 days from the receipt of the written notice of suspension. In addition to, or in-lieu of a hearing, the agency may request an administrator review as described in section (13) of this rule. The administrator review does not diminish the right of the agency to a hearing.

(B) 24-HOUR RESIDENTIAL SERVICES. An agency endorsed to provide 24-hour residential services 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) ADMINISTRATOR REVIEW.

(a) In addition to the right to a contested case hearing, an agency may request an administrator review notwithstanding subsection (b) of this section.

(b) 24-HOUR RESIDENTIAL SERVICES. An agency endorsed to provide 24-hour residential services as described in OAR chapter 411, division 325 may not request an administrator review for revocation or suspension. An agency endorsed to provide 24-hour residential services as described in OAR chapter 411, division 325 may request an administrator review for imposition of conditions.

(c) The Department must receive a written request for an administrator 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 administrator review, any additional written materials the agency wishes to have considered during the review.

(d) The determination of the administrator review is issued in writing within 10 business days from the receipt of the written request for a 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 Department must receive a 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 administrator 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 & 410.070

Stats. Implemented: ORS 409.050 & 410.070

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

## 411-323-0050

### Agency Management and Personnel Practices

(1) NON-DISCRIMINATION. The agency must comply with all applicable state and federal statutes, rules, and regulations in regard to non-discrimination in employment policies and practices.

(2) BASIC PERSONNEL POLICIES AND PROCEDURES. The agency must have in place and implement personnel policies and procedures that address suspension, increased supervision, or other appropriate disciplinary employment procedures when a staff member, program services provider, or subcontractor, including respite providers and volunteers, has been identified as an accused person in an abuse investigation or when the allegation of abuse has been substantiated.

(3) PROHIBITION AGAINST RETALIATION. The agency or program services provider may not retaliate against any staff member or subcontractor, including relief providers and volunteers, that report in good faith suspected abuse or retaliate against the individual receiving services with respect to any report. An accused person may not self-report solely for the purpose of claiming retaliation.

(a) Any agency, program services provider, or person that retaliates against any person because of a report of suspected abuse or neglect is liable according to ORS 430.755 in a private action to that person for actual damages and, in addition, is subject to a penalty up to \$1000, notwithstanding any other remedy provided by law.

(b) Any adverse action is evidence of retaliation if taken within 90 days of a report of abuse. For purposes of this section, "adverse action"

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means any action taken by an agency, program services provider, or person involved in a report against the person making the report or against the individual receiving services because of the report and includes, but is not limited to:

- (A) Discharge or transfer from the agency, except for clinical reasons;
- (B) Discharge from or termination of employment;
- (C) Demotion or reduction in remuneration for program services; or
- (D) Restriction or prohibition of access to the agency or the individuals served by the agency.

## (4) MANDATORY ABUSE REPORTING PERSONNEL POLICIES AND PROCEDURES.

(a) Any staff, program services providers, substitute caregivers, independent contractors, and volunteers are mandatory reporters.

(b) The agency must notify all agency staff, program services providers, substitute caregivers, independent contractors, and volunteers of mandatory reporting status at least annually on forms provided by the Department.

(c) The agency must provide all agency staff, program services providers, substitute caregivers, independent contractors, and volunteers with a Department produced card regarding abuse reporting status and abuse reporting requirements.

(d) Agencies providing program services to adults must report suspected abuse to the CDDP where the adult resides. A report must also be made to law enforcement if there is reason to believe a crime has been committed.

(e) Agencies providing program services to children must report suspected abuse to the Department or law enforcement in the county where the child resides.

(5) APPLICATION FOR EMPLOYMENT. An application for employment at the agency must inquire whether an applicant has had any founded reports of child abuse or substantiated abuse.

(6) BACKGROUND CHECKS. Any staff, volunteer, program services provider, relief care provider, crisis provider, advisor, or any subject individual defined by OAR 407-007-0210, including staff who are not identified in this rule but use public funds intended for the operation of an agency, who has or shall have contact with an individual in program services, must have an approved background check in accordance with 407-007-0200 to 407-007-0370 and ORS 181.534.

(a) Effective July 28, 2009, the agency may not use public funds to support, in whole or in part, any person described above in section (6) of this rule in any capacity who has been convicted of any of the disqualifying crimes listed in OAR 407-007-0275.

(b) Subsection (a) of this section does not apply to agency staff who were hired prior to July 28, 2009 that remain in the current position for which the staff member was hired.

(c) Any person described above in section (6) of this rule must self-report any potentially disqualifying condition as described in OAR 407-007-0280 and 407-007-0290. The person must notify the Department or the designee of the Department within 24 hours.

(7) EXECUTIVE DIRECTOR QUALIFICATIONS. The agency must be operated under the supervision of an Executive Director who has a minimum of a bachelor's degree and two years of experience, including supervision, in intellectual or developmental disabilities, mental health, rehabilitation, social services, or a related field. Six years of experience in the identified fields may be substituted for a degree.

(8) GENERAL STAFF QUALIFICATIONS. Any staff member providing program services to individuals must meet the following criteria:

- (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 and section (6) of this rule;
- (c) If hired on or after 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) Hold a current, valid, and unrestricted professional license or certification where services and supervision requires specific professional education, training, and skill;
- (f) Understand requirements of maintaining confidentiality and safeguarding individual information;
- (g) Not be on the list of excluded or debarred providers maintained by the Office of the Inspector General;
- (h) Be literate and capable of understanding written and oral orders;
- (i) Be able to communicate with individuals, physicians, services coordinators, and appropriate others;

(j) Be able to respond appropriately to emergency situations at all times;

(k) Be certified in CPR and First Aid by a recognized training agency within 90 days of employment;

(l) Receive 12 hours of job-related in-service training annually;

(m) Have clear job responsibilities as described in a current signed and dated job description; and

(n) If transporting individuals, have a valid license to drive and vehicle insurance in compliance with the laws of the Department of Motor Vehicles.

(9) PERSONNEL FILES AND QUALIFICATION RECORDS. The agency must maintain up-to-date written job descriptions for all staff as well as a file available to the Department or the designee of the Department for inspection that includes written documentation of the following for each staff member:

(a) Written documentation that references and qualifications were checked;

(b) Written documentation by the Department of an approved background check as defined in OAR 407-007-0210;

(c) Written documentation of staff notification of mandatory abuse training and reporter status prior to supervising individuals and annually thereafter;

(d) Written documentation of any complaints filed against the staff member and the results of the complaint process, including, if any, disciplinary action;

(e) Written documentation of any founded report of child abuse or substantiated abuse;

(f) Written documentation of 12 hours of job-related in-service training annually;

(g) Documentation that the staff member has been certified in CPR and First Aid by a recognized training agency within 90 days of employment and that certification is kept current; and

(h) For staff operating vehicles that transport individuals, documentation of a valid license to drive and proof of vehicle insurance in compliance with the laws of the Department of Motor Vehicles.

(10) DISSOLUTION OF AN AGENCY. Prior to the dissolution of an agency, a representative of the governing body or owner of the agency must notify the Department 30 days in advance in writing and make appropriate arrangements for the transfer of the records for the individuals.

Stat. Auth. ORS 409.050 & 410.070

Stats. Implemented: ORS 409.050 & 410.070

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

## 411-323-0060

### Policies and Procedures

#### (1) INDIVIDUAL RIGHTS.

(a) The agency must have and implement written policies and procedures that protect the individual rights described in subsection (d) of this section.

(b) Upon enrollment, request, and annually thereafter, the individual rights described in subsection (d) of this section must be provided to an individual and the legal or designated representative of an individual.

(c) The individual rights described in this rule 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.

(d) While receiving developmental disability services, an individual has the right to:

(A) Be free and protected 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, protective physical intervention, chemical restraint, or mechanical restraint and assured that 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;

(C) 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;

(D) Informed, voluntary, written consent prior to receiving services, except in a medical emergency or as otherwise permitted by law;

(E) Informed, voluntary, written consent prior to participating in any experimental programs;

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(F) A humane service environment that affords reasonable protection from harm, reasonable privacy in all matters that do not constitute a documented health and safety risk to the individual, and access and the ability to engage in private communications with any public or private rights protection program, services coordinator, and others chosen by the individual, through personal visits, mail, telephone, or electronic means;

(G) Contact and visits with legal and medical professionals, legal or designated representatives, family members, friends, advocates, and others chosen by the individual, except where prohibited by court order;

(H) Participate regularly in the community and use community resources, including recreation, developmental disability services, employment services and day support activities, school, educational opportunities, and health care resources;

(I) Access to a free and appropriate public education for children and adults less than 21 years of age, including a procedure for school attendance or refusal to attend.

(J) Reasonable and lawful compensation for performance of labor, except personal housekeeping duties;

(K) Manage the individual's own money and financial affairs unless the right has been taken away by court order or other legal procedure;

(L) Keep and use personal property, personal control and freedom regarding personal property, and a reasonable amount of personal storage space;

(M) Adequate food, housing, clothing, medical and health care, supportive services, and training;

(N) Seek a meaningful life by choosing from available services, service settings, and service providers consistent with the support needs of the individual identified through a functional needs assessment, and enjoying the benefits of community involvement and community integration:

(i) Services must promote independence and dignity and reflect the age and preferences of the individual; and

(ii) The services must be provided in a setting and under conditions that are most cost effective and least restrictive to the liberty of the individual, least intrusive to the individual, and that provide for self-directed decision-making and control of personal affairs appropriate to the preferences, age, and identified support needs of the individual;

(O) 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;

(P) Ongoing opportunity to participate in the planning of services in a manner appropriate to the capabilities of the individual, including the right to participate in the development and periodic revision of the plan for services, the right to be provided with a reasonable explanation of all service considerations through choice advising, and the right to invite others chosen by the individual to participate in the plan for services;

(Q) Request a change in the plan for services;

(R) A timely decision upon request for a change in the plan for services;

(S) Advance written notice of any action that terminates, suspends, reduces, or denies a service or request for service, and notification of other available sources for necessary continued services;

(T) A hearing to challenge an action that terminates, suspends, reduces, or denies a service or request for service;

(U) Exercise all rights set forth in ORS 426.385 and 427.031 if the individual is committed to the Department;

(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), the procedures for reporting abuse, and the procedures for filing complaints, reviews, or requests for hearings if services have been or are proposed to be terminated, suspended, reduced, or denied;

(W) Have these rights and procedures prominently posted in a location readily accessible to individuals and made available to representatives of the individual;

(X) Be encouraged and assisted in exercising all legal, civil, and human rights accorded to other citizens of the same age, except when limited by a court order;

(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; and

(Z) Freedom to exercise all rights described in this rule without any form of reprisal or punishment.

(e) 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, unless specifically prohibited by law in the case of children less than 18 years of age.

(f) An individual who is receiving developmental disability services, or as applicable a legal or designated representative of the individual, has the right under ORS 430.212 to 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.

(g) 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.

(h) Nothing in this rule may be construed to alter any legal rights and responsibilities between a parent and child.

(i) 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 the adult include, but are not limited to, the right to contact and retain counsel and to have access to personal records. (ORS 125.300).

(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.

(4) INDEPENDENCE, PRODUCTIVITY, AND INTEGRATION. As stated in ORS 427.007, the agency must have a written policy that states each ISP is developed to meet the level of independence, productivity, and integration into the local community.

(5) 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.

(6) 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.

(7) PROTECTIVE PHYSICAL INTERVENTION. The agency must have and implement written policies and procedures for protective physical interventions that address the following:

(a) Circumstances allowing the use of protective physical intervention. 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;

(B) As an emergency measure if absolutely necessary to protect the individual or others from immediate injury; or

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(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.

(8) **HANDLING AND MANAGING INDIVIDUALS' MONEY.** The agency must have and implement written policies and procedures for the handling and management of individuals' money. Such policies and procedures must provide for:

(a) Financial planning and management of an individual's funds unless the ISP documents and justifies limitations to self-management;

(b) Safeguarding of an individual's funds;

(c) Individuals receiving and spending his or her money; and

(d) Taking into account the interests and preferences of the individual.

(9) **COMPLAINTS.**

(a) Complaints 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 enrollment, 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.

(10) **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

## 411-323-0070

### Variations

(1) The Department may grant a variance to these rules based upon a demonstration by the agency that an alternative method or different approach provides equal or greater agency effectiveness and does not adversely impact the welfare, health, safety, or rights of individuals or violate federal Medicaid law.

(2) The agency requesting a variance must submit, in writing, an application to the Department that contains the following:

(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; and

(d) If the variance applies to the program services for an individual, evidence that the variance is consistent with the currently authorized ISP for the individual.

(3) The request for a variance is approved or denied by the Department.

(4) The decision of the Department is sent to the agency, the CDDP, and to all relevant Department programs or offices within 30 calendar days from the receipt of the variance request.

(5) The agency may request an administrator review of the denial of a variance request. The Department must receive a written request for an administrator review within 10 business days from the receipt of the denial. The decision of the Director is the final response from the Department.

(6) The Department determines the duration of the variance.

(7) The agency may implement a variance only after written approval from 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

## 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 chapter 411, division 325:

(1) "24-Hour Residential Program" means a comprehensive residential home licensed by the Department under ORS 443.410 to provide residential care and training 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 home licensed to provide 24-hour residential services for children with intellectual or developmental disabilities.

(b) 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 in 407-045-0310.

(4) "Administrator Review" means the Director of the Department reviews a decision upon request, including the documentation related to the decision, and issues a determination.

(5) "Adult" means an individual who is 18 years or older with an intellectual or developmental disability.

(6) "Agency" means "service provider" as defined in this rule.

(7) "Aids to Physical Functioning" means any special equipment prescribed for an individual by a physician, therapist, or dietitian that maintains or enhances the physical functioning of the individual.

(8) "Apartment" means "24-hour residential program" as defined in this rule.

(9) "Appeal" means the process under ORS chapter 183 that a service provider may use to petition a civil penalty.

(10) "Applicant" means a person, agency, corporation, or governmental unit who applies for a license to operate a residential home providing 24-hour comprehensive residential services.

(11) "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.

(12) "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.

(13) "Behavior Data Summary" means the document composed by a service 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.

(14) "Board of Directors" means "board of directors" as defined in OAR 411-323-0020.

(15) "Career Development Plan" means the part of an ISP that identifies the employment goals and objectives for an individual, the services and supports needed to achieve those goals, the people, agencies, and providers assigned to assist the individual to attain those goals, the obstacles to the individual working in an individualized job in an integrated employment setting, and the services and supports necessary to overcome those obstacles.

(16) "CDDP" means "community developmental disability program" as defined in OAR 411-320-0020.

(17) "Certificate" means the document issued by the Department to a service provider that certifies the service provider is eligible under the rules in OAR chapter 411, division 323 to receive state funds for the provision of endorsed 24-hour residential services.

(18) "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.

(19) "Child" means an individual who is less than 18 years of age that has a provisional determination of an intellectual or developmental disability.

(20) "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, service providers, services, and service settings. Personal outcomes, goals, and activities are supported in the context of balancing the rights, risks, and personal choices of the individual. Individuals are supported in opportunities to make changes when so expressed. Choice may be communicated orally, through sign language, or by other communication methods.

(21) "Competency Based Training Plan" means the written description of the process of the service 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 service provider; and

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(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 service provider to accommodate the specific circumstances of a staff member.

(22) "Complaint" means "complaint" as defined in OAR 411-318-0005.

(23) "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 licensee.

(24) "Crisis" means "crisis" as defined in OAR 411-320-0020.

(25) "Denial" means the refusal of the Department to issue a certificate, endorsement, or license to operate a 24-hour residential home for individuals with intellectual or developmental disabilities because the Department has determined that the applicant or the home is not in compliance with these rules or the rules in OAR chapter 411, division 323.

(26) "Department" means the Department of Human Services.

(27) "Designated Representative" means any adult, such as a parent, family member, guardian, advocate, or other person authorized in writing by an individual to serve as the representative of the individual in connection with the provision of funded supports, who is not also a paid service provider for the individual. An individual is not required to appoint a designated representative.

(28) "Developmental Disability" means "developmental disability" as defined in OAR 411-320-0020 and described in 411-320-0080.

(29) "Direct Nursing Service" 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. Direct nursing service differs from administrative nursing services. Administrative nursing services include non-individual-specific services, such as quality assurance reviews, authoring health related agency policies and procedures, or providing general training for staff.

(30) "Director" means the Director of the Department of Human Services, Office of Developmental Disability Services or the designee of the Director.

(31) "Domestic Animals" mean the animals domesticated so as to live and breed in a tame condition, such as dogs, cats, and domesticated farm stock.

(32) "Duplex" means "24-hour residential program" as defined in this rule.

(33) "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.

(34) "Endorsement" means the authorization to provide 24-hour residential services issued by the Department to a certified service provider that has met the qualification criteria outlined in these rules and the rules in OAR chapter 411, division 323.

(35) "Entry" means admission to a Department-funded developmental disability service.

(36) "Executive Director" means the person designated by a board of directors or corporate owner that is responsible for the administration of 24-hour residential services.

(37) "Exit" means termination or discontinuance of a Department-funded developmental disability service by a Department licensed or certified provider.

(38) "Functional Needs Assessment":

(a) Means the comprehensive assessment or re-assessment that:

(A) Documents physical, mental, and social functioning;

(B) Identifies risk factors, choices and preferences, service and support needs, strengths, and goals; 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, 24-hour residential services 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 18 years of age and older receiving, or targeted to receive, 24-hour residential services is

known as the Supports Intensity Scale (SIS). The Department incorporates the SIS into these rules by this reference.

(d) Printed copies may be obtained by calling (503) 945-6398 or writing the Department of Human Services, Developmental Disabilities, ATTN: Rule Coordinator, 500 Summer Street NE, Salem, OR 97301.

(39) "Guardian" means the parent of an individual less than 18 years of age or the person or agency appointed and authorized by a court to make decisions about services for an individual.

(40) "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.

(41) "Hearing" means a contested case hearing subject to OAR 137-003-0501 to 137-003-0070, which results in a final order.

(42) "Home" means "24-hour residential program" as defined in this rule.

(43) "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.

(44) "Independence" means the extent to which an individual exerts control and choice over his or her own life.

(45) "Individual" means an adult or a child with an intellectual or developmental disability applying for, or determined eligible for, developmental disability services.

(46) "Individualized Education Plan" means the written plan of instructional goals and objectives developed in conference with an individual less than 21 years of age, the parent or legal representative of the individual (as applicable), teacher, and a representative of the public school district.

(47) "Integration" as defined in ORS 427.005 means:

(a) The 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 an intellectual or developmental disability participate, together with regular contact with people without an intellectual or developmental disability; and

(c) Individuals with intellectual or developmental disabilities reside in homes or home-like settings that are in proximity to community resources and foster contact with people in the community.

(48) "Intellectual Disability" means "intellectual disability" as defined in OAR 411-320-0020 and described in OAR 411-320-0080.

(49) "Involuntary Transfer" means a service provider has made the decision to transfer an individual and the individual, or as applicable the legal or designated representative of the individual, has not given prior approval.

(50) "ISP" means "Individual Support Plan". An ISP includes the written details of the supports, activities, and resources required for an individual 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 the services and supports that are important for an individual to meet the needs of the individual identified through a functional needs assessment as well as the preferences of the individual for service 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, state plan, or natural supports.

(51) "ISP Team" means a team composed of an individual receiving services, the legal or designated representative of the individual (as applicable), services coordinator, and others chosen by the individual, or as applicable the legal or designated representative of the individual, such as service providers or family members.

(52) "Legal Representative" means a person who has the legal authority to act for an individual.

(a) For a child, the legal representative is the parent of the child unless a court appoints another person or agency to act as the guardian of the child.

(b) For an adult, the legal representative is the attorney at law who has been retained by or for the adult, the power of attorney for the adult, or a person or agency authorized by a court to make decisions about services for the adult.

(53) "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.

(54) "Licensee" means the person or organization to whom a certificate, endorsement, and license is granted.

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(55) "Mandatory Reporter":

(a) Means any public or private official as defined in OAR 407-045-0260 who:

(A) Is a staff or volunteer working with a child 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) Is a staff or volunteer working 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.

(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.

(56) "Mechanical Restraint" means any mechanical device, material, object, or equipment that is 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.

(57) "Medicaid Agency Identification Number" means the numeric identifier assigned by the Department to a service provider following the enrollment of the service provider as described in OAR chapter 411, division 370.

(58) "Medicaid Performing Provider Number" means the numeric identifier assigned to an entity or person by the Department following the enrollment of the entity or person as described in OAR chapter 411, division 370. The Medicaid Performing Provider Number is used by the rendering service provider for identification and billing purposes associated with service authorizations and payments.

(59) "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.

(60) "Natural Supports" means the parental responsibilities for a child and the voluntary resources available to an individual from the relatives, friends, significant others, neighbors, roommates, and the community of the individual that are not paid for by the Department.

(61) "Nursing Service Plan" means the plan that is developed by a registered nurse based on an initial nursing assessment, reassessment, or an update made to a nursing assessment as the result of a monitoring visit.

(a) The Nursing Service Plan is specific to an individual and identifies the diagnoses and health needs of the individual and any service coordination, teaching, or delegation activities.

(b) The Nursing Service Plan is separate from the ISP and any service plans developed by other health professionals.

(62) "OHP Plus" means only the Medicaid benefit packages provided under OAR 410-120-1210(4)(a) and (b).

(63) "OIS" means "Oregon Intervention System". OIS is the system of providing training to people who work with designated individuals to provide elements of positive behavior support and non-aversive behavior intervention. OIS uses principles of pro-active support and describes approved protective physical intervention techniques that are used to maintain health and safety.

(64) "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 service provider; and

(b) The associated timelines in which newly hired staff must demonstrate the competencies.

(65) "OSIP-M" means "Oregon Supplemental Income Program-Medical" as described in OAR 461-001-0030. OSIP-M is Oregon Medicaid insurance coverage for individuals who meet the eligibility criteria described in OAR chapter 461.

(66) "Person-Centered Planning":

(a) Means a timely and formal or informal process that is driven by an individual, includes people chosen by the individual, ensures that the individual directs the process to the maximum extent possible, and that the individual is enabled to make informed choices and decisions consistent with CFR 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, service providers, 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.

(67) "Protection" means the necessary actions taken as soon as possible to prevent subsequent abuse or exploitation of an individual, to prevent self-destructive acts, or to safeguard the person, property, and funds of an individual.

(68) "Protective Physical Intervention" means any manual physical holding of, or contact with, an individual that restricts freedom of movement.

(69) "Protective Services" means "protection" as defined in this rule.

(70) "Provider" means "service provider" as defined in this rule.

(71) "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.

(72) "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 supports to an individual.

(73) "Revocation" means the action taken by the Department to rescind a certificate, endorsement, or license after the Department has determined that the service provider is not in compliance with these rules or the rules in OAR chapter 411, division 323.

(74) "Service Level" means the amount of services determined necessary by a functional needs assessment and made available to meet the identified support needs of an individual.

(75) "Service 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.

(76) "Services" mean supportive services including, but not limited to, supervision, protection, and assistance in bathing, dressing, grooming, eating, management of money, transportation, or recreation. 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.

(77) "Services Coordinator" means an employee of the Department, CDDP, 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.

(78) "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.

(79) "Staff" means paid employees responsible for providing services to individuals whose wages are paid in part or in full with funds sub-contracted with the CDDP or contracted directly through the Department.

(80) "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.

(81) "Support" means the assistance that an individual requires, solely because of the affects of an intellectual or developmental disability, to maintain or increase independence, achieve community presence and participation, and improve productivity. Support is subject to change with time and circumstances.

(82) "Suspension" means an immediate temporary withdrawal of the approval to operate 24-hour residential services after the Department determines a service provider or 24-hour residential home is not in compliance with one or more of these rules or the rules in OAR chapter 411, division 323.

(83) "These Rules" mean the rules in OAR chapter 411, division 325.

(84) "Transfer" means movement of an individual from one home to another home administered or operated by the same service provider.

(85) "Transition Plan" means the written plan of services and supports for the period of time between the entry of an individual into a particular service and the development of an ISP for the individual. The Transition Plan is approved by a services coordinator and includes a summary of the services necessary to facilitate adjustment to the services offered, the sup-

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ports necessary to ensure health and safety, and the assessments and consultations necessary for ISP development.

(86) "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, a fire requiring the services of a fire department, an act of physical aggression, or any incident requiring an abuse investigation.

(87) "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 service 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

## 411-325-0060

### Conditions on License

The Department may attach conditions to a license that limit, restrict, or specify other criteria for operation of a home. The type of condition attached to a license must directly relate to the risk of harm or potential risk of harm to individuals.

(1) The Department may attach a condition to a license 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;
- (d) The home is not being operated in compliance with these rules; or
- (e) The service provider is licensed to provide services for a specific person only and further placements may not be made into that home or facility.

(2) Conditions that the Department may impose on a license include, but are not limited to:

- (a) Restricting the total number of individuals that may be served;
- (b) Restricting the total number of individuals allowed within a licensed classification level based upon the capability and capacity of the service provider and staff to meet the health and safety needs of all individuals;
- (c) Restricting the support level of individuals allowed within a licensed classification level based upon the capability and capacity of the service provider 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 service provider 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.

(3) A written notice is issued to the service provider by the Department when the Department imposes a condition on the license. The written notice of 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 condition imposed remains in effect until the Department has sufficient cause to believe the situation that warranted the condition has been remedied.

(4) The service provider may request a hearing in accordance with ORS Chapter 183 and this rule upon written notice of conditions.

(a) The service provider 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, a service provider may request an administrator review as described in section (5) of this rule. The administrator review does not diminish the right of the service provider to a hearing.

#### (5) ADMINISTRATOR REVIEW.

(a) In addition to the right to a contested case hearing, a service provider may request an administrator review by the Director of the Department for imposition of conditions.

(b) The Department must receive a written request for an administrator review within 10 days from the receipt of the notice of conditions. The service provider may submit, along with the written request for an admin-

istrator review, any additional written materials the service provider wishes to have considered during the review.

(c) The determination of the administrator review is issued in writing within 10 days from the receipt of the written request for review, or by a later date as agreed to by the service provider.

(d) The service provider may request a hearing if the decision of the Department is to affirm the condition. The Department must receive a request for a hearing within 21 days from the receipt of the original written notice of conditions.

(6) The service provider may send a written request to the Department to remove a condition if the service provider believes the situation that warranted the condition has been remedied.

(7) Conditions must be posted with the license in a prominent location and be available for inspection at all times.

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 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; 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

## 411-325-0110

### Variations

(1) The Department may grant a variance to these rules based upon a demonstration by the service provider that an alternative method or different approach provides equal or greater effectiveness and does not adversely impact the welfare, health, safety, or rights of the individuals or violate federal Medicaid law.

(2) The service provider requesting a variance must submit, in writing, an application to the CDDP that contains the following:

(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; and

(d) If the variance applies to the services of an individual, evidence that the variance is consistent with the currently authorized ISP for the individual.

(3) The CDDP must forward the signed variance request form to the Department within 30 days from the receipt of the request indicating the position of the CDDP on the proposed variance.

(4) The request for a variance is approved or denied by the Department.

(5) The decision of the Department is sent to the service provider, the CDDP, and to all relevant Department programs or offices within 30 calendar days from the receipt of the variance request.

(6) The service provider may request an administrator review of the denial of a variance request. The Department must receive a written request for an administrator review within 10 working days from the receipt of the denial. The service provider must send a copy of the written request for an administrator review to the CDDP. The decision of the Director is the final response from the Department.

(7) The duration of the variance is determined by the Department.

(8) The service provider may implement a variance only after written approval from 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 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

## 411-325-0120

### Medical Services

(1) The service provider must have and implement policies and procedures that maintain and protect the physical health of individuals. Policies and procedures must address the following:

(a) Individual health care;

(b) Medication administration;

(c) Medication storage;

(d) Response to emergency medical situations;

(e) Nursing service provision, if provided;

(f) Disposal of medications; and

(g) Early detection and prevention of infectious disease.

#### (2) INDIVIDUAL HEALTH CARE.

(a) An individual must receive care that promotes the health and well-being of the individual as follows:

(A) The service provider must ensure each individual has a primary physician or primary health care provider whom the individual, or as appli-

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cable the parent or legal representative of the individual, has chosen from among qualified providers;

(B) The service provider must ensure each individual receives a medical evaluation by a qualified health care provider no fewer than every two years or as recommended by a physician;

(C) The service provider 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;

(b) A written, signed order from a physician or qualified health care provider is required prior to the usage or implementation of all of the following:

- (A) Prescription medications;
- (B) Non prescription medications except over the counter topical;
- (C) Treatments other than basic first aid;
- (D) Modified or special diets;
- (E) Adaptive equipment; and
- (F) Aids to physical functioning.

(c) The service provider must implement the order of a physician or qualified health care provider.

(d) The service provider must maintain records on each individual to aid physicians, licensed health professionals, and the service provider in understanding the medical history of the individual. Such documentation must include:

(A) A list of known health conditions, medical diagnoses, known allergies, and immunizations;

(B) A record of visits to licensed health professionals that include documentation of the consultation and any therapy provided; and

(C) A record of known hospitalizations and surgeries.

(3) MEDICATION.

(a) All medications must be:

(A) Kept in their original containers;

(B) Labeled by the dispensing pharmacy, product manufacturer, or physician, as specified per the written order of a physician or qualified health care provider; and

(C) Kept in a secured locked container and stored as indicated by the product manufacturer.

(b) All medications and treatments must be recorded on an individualized medication administration record (MAR). The MAR must include:

(A) The name of the individual;

(B) A transcription of the written order of a physician or qualified health care provider, including the brand or generic name of the medication, prescribed dosage, frequency, and method of administration;

(C) For topical medications and treatments without the order of a physician or qualified health care provider, a transcription of the printed instructions from the 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 (i.e., as needed) medication was administered;

(H) Documented effectiveness of any PRN (i.e., as needed) medication administration;

(I) An explanation of any medication administration irregularity; and

(J) Documentation of any known allergy or adverse drug reaction.

(c) Self-administration of medication.

(A) For individuals who independently self-administer medications, the ISP team must determine a plan for the periodic monitoring and review of the self-administration of medications.

(B) The service provider must ensure that individuals able to self-administer medications keep the medications in a secure locked container unavailable to other individuals residing in the same residence and store them as recommended by the product manufacturer.

(d) PRN (i.e., as needed) orders are not allowed for psychotropic medication.

(e) 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 a health care provider, from a single pharmacy which maintains a medication profile for the individual;

(B) Maintaining information about the desired effects and side effects of each medication;

(C) Ensuring that medications prescribed for one individual are not administered to, or self-administered by, another individual or staff member; and

(D) Documentation in the record for an individual of the reason why all medications are not provided through a single pharmacy.

(f) All unused, discontinued, outdated, recalled, and contaminated medications must be disposed of in a manner designed to prevent the illegal diversion of the medication. A written record of the disposal of the medication must be maintained and include documentation of:

(A) Date of disposal;

(B) Description of the medication, including dosage strength and amount being disposed;

(C) 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.

(4) DIRECT NURSING SERVICES. When direct nursing services are provided to an individual, the service 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 the registered nurse.

(5) DELEGATION AND SUPERVISION OF NURSING TASKS. Nursing tasks must be delegated by a registered nurse to a service provider in accordance with the rules of the Oregon State Board of Nursing in OAR chapter 851, division 47.

(a) The delegation process includes:

(A) Assessing an individual in a specific situation;

(B) Evaluating the ability of the service provider to perform the nursing task;

(C) Teaching the nursing task;

(D) Ensuring supervision of the service provider; and

(E) Re-evaluating the nursing task at regular intervals.

(b) The service provider performs nursing tasks under the delegated authority of a registered nurse.

(6) When the medical, behavioral, or physical needs of an individual change to a point that they may not be met by the service provider, the services coordinator must be notified immediately and notification must be documented.

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

## 411-325-0300

### General Rights

(1) INDIVIDUAL RIGHTS.

(a) The service provider must protect the rights of individuals described in subsection (d) of this section and encourage and assist individuals to understand and exercise these rights.

(b) Upon enrollment, request, and annually thereafter, the individual rights described in subsection (d) of this section must be provided to an individual and the legal or designated representative of an individual.

(c) The individual rights described in this rule 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.

(d) While receiving developmental disability services, an individual has the right to:

(A) Be free and protected 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, protective physical intervention, chemical restraint, or mechanical restraint and assured that 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;

(C) 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;

(D) Informed, voluntary, written consent prior to receiving services, except in a medical emergency or as otherwise permitted by law;

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(E) Informed, voluntary, written consent prior to participating in any experimental programs;

(F) A humane service environment that affords reasonable protection from harm, reasonable privacy in all matters that do not constitute a documented health and safety risk to the individual, and access and the ability to engage in private communications with any public or private rights protection program, services coordinator, and others chosen by the individual, through personal visits, mail, telephone, or electronic means;

(G) Contact and visits with legal and medical professionals, legal or designated representatives, family members, friends, advocates, and others chosen by the individual, except where prohibited by court order;

(H) Participate regularly in the community and use community resources, including recreation, developmental disability services, employment services and day support activities, school, educational opportunities, and health care resources;

(I) Access to a free and appropriate public education for children and adults less than 21 years of age, including a procedure for school attendance or refusal to attend.

(J) Reasonable and lawful compensation for performance of labor, except personal housekeeping duties;

(K) Manage the individual's own money and financial affairs unless the right has been taken away by court order or other legal procedure;

(L) Keep and use personal property, personal control and freedom regarding personal property, and a reasonable amount of personal storage space;

(M) Adequate food, housing, clothing, medical and health care, supportive services, and training;

(N) Seek a meaningful life by choosing from available services, service settings, and service providers consistent with the support needs of the individual identified through a functional needs assessment, and enjoying the benefits of community involvement and community integration:

(i) Services must promote independence and dignity and reflect the age and preferences of the individual; and

(ii) The services must be provided in a setting and under conditions that are most cost effective and least restrictive to the liberty of the individual, least intrusive to the individual, and that provide for self-directed decision-making and control of personal affairs appropriate to the preferences, age, and identified support needs of the individual;

(O) 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;

(P) Ongoing opportunity to participate in the planning of services in a manner appropriate to the capabilities of the individual, including the right to participate in the development and periodic revision of the plan for services, the right to be provided with a reasonable explanation of all service considerations through choice advising, and the right to invite others chosen by the individual to participate in the plan for services;

(Q) Request a change in the plan for services;

(R) A timely decision upon request for a change in the plan for services;

(S) Advance written notice of any action that terminates, suspends, reduces, or denies a service or request for service, and notification of other available sources for necessary continued services;

(T) A hearing to challenge an action that terminates, suspends, reduces, or denies a service or request for service;

(U) Exercise all rights set forth in ORS 426.385 and 427.031 if the individual is committed to the Department;

(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), the procedures for reporting abuse, and the procedures for filing complaints, reviews, or requests for hearings if services have been or are proposed to be terminated, suspended, reduced, or denied;

(W) Have these rights and procedures prominently posted in a location readily accessible to individuals and made available to representatives of the individual;

(X) Be encouraged and assisted in exercising all legal, civil, and human rights accorded to other citizens of the same age, except when limited by a court order;

(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; and

(Z) Freedom to exercise all rights described in this rule without any form of reprisal or punishment.

(e) 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, unless specifically prohibited by law in the case of children less than 18 years of age.

(f) An individual who is receiving developmental disability services, or as applicable a legal or designated representative of the individual, has the right under ORS 430.212 to 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.

(g) 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.

(h) Nothing in this rule may be construed to alter any legal rights and responsibilities between a parent and child.

(i) 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 the adult include, but are not limited to, the right to contact and retain counsel and to have access to personal records. (ORS 125.300).

## (2) COMPLAINTS.

(a) Complaints must be addressed in accordance with OAR 411-318-0015.

(b) The service provider must have and implement written policies and procedures for individual complaints in accordance with OAR 411-318-0015.

(c) Upon entry, 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 involuntarily 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, or as applicable the legal or designated representative of the individual, may request a hearing as provided in ORS chapter 183 and OAR 411-318-0025 for involuntary denials, reductions, suspensions, or terminations or 411-318-0030 for involuntary transfers or exits.

(c) Upon entry, 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

## 411-325-0320

### Rights: Informal Complaints and Formal Grievances

(1) The service provider must implement written policies and procedures for individuals' grievances as required by OAR 411-323-0060.

(2) The service provider must send copies of the documentation on all grievances to the services coordinator within 15 working days of initial receipt of the grievance.

(3) At entry to service and as changes occur, the service provider must inform each individual, and as applicable the individual's parent, legal representative, or designated representative, orally and in writing of the service provider's grievance policy and procedures and a description of how to utilize them.

Stat. Auth.: ORS 409.050, 410.070, 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 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 1-2012, f. & cert. ef. 1-6-12; SPD 58-2013, f. 12-27-13, cert. ef. 12-28-13; Suspended by APD 24-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14

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## 411-325-0330

### Rights: Medicaid Fair Hearings

The service provider must have a policy and procedure that provides for immediate referral to the CDDP when a Medicaid recipient, or as applicable the Medicaid recipient's parent or legal or designated representative, requests a fair hearing. The policy and procedure must include immediate notice to the individual, and as applicable the individual's parent or legal or designated representative, of the right to a Medicaid fair hearing each time a service provider takes action to deny, terminate, suspend, or reduce an individual's access to services covered under Medicaid.

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; Suspended by APD 24-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14

## 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, 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 24-hour residential services is subject to eligibility as described in this section.

(a) To be eligible for 24-hour residential services, 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 support services brokerage; and

(C) Not be receiving supported living services for adults with intellectual or developmental disabilities 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 461-001-0000) is subject to the rules regarding transfer of assets (see 461-140-0210 to 461-140-0300) in the same manner as if the individual was requesting these services under OSIP-M. This includes, but is not limited to, the following assets:

(i) An annuity that is evaluated according to OAR 461-145-0022;

(ii) A transfer of property when an individual retains a life estate that is evaluated according to OAR 461-145-0310;

(iii) A loan made by an individual that is evaluated according to OAR 461-145-0330; or

(iv) An irrevocable trust that is evaluated according to OAR 461-145-0540;

(B) When an individual is disqualified for a 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 OSIP-M.

(C) An individual found to have transferred assets is not eligible for 24-hour residential services.

(3) **ENTRY.**

(a) The Department authorizes entry into residential services for children and stabilization and crisis units.

(b) The CDDP services coordinator authorizes entry into 24-hour residential programs, except in the cases of residential services for children and stabilization and crisis units.

(4) **DOCUMENTATION UPON ENTRY.**

(a) A service provider must acquire the following information prior to or upon an entry ISP team meeting:

(A) A copy of the eligibility determination document for the 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 supports that includes when available:

(i) The results of a physical exam made within 90 days prior to entry;

(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 for the individual;

(F) Copies of documents relating to the guardianship or conservatorship of the individual, health care representative for the individual, or any other legal restrictions on the rights of the individual (if applicable);

(G) 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

(H) A copy of the most recent Behavior Support Plan and assessment, ISP, Nursing Service Plan, and Individualized Education Plan (if applicable).

(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 service 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. Findings of the entry meeting must be recorded in the file for the individual and include at a minimum:

(a) The name of the individual proposed for services;

(b) The date of the meeting;

(c) The date determined to be the date of entry of the individual;

(d) Documentation of the participants included in the meeting;

(e) Documentation of the pre-entry information required by section

(4)(a) 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) **VOLUNTARY TRANSFERS AND EXITS.**

(a) A service provider must promptly notify a services coordinator if an individual, or as applicable the legal or designated representative of the individual, gives notice of the intent of the individual to exit or the individual abruptly exits services.

(b) A service 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 service provider is responsible for the provision of services until an individual exits the home.

(7) **INVOLUNTARY TRANSFERS AND EXITS.**

(a) A service provider must only 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 service provider;

(D) The individual fails to pay for services; or

(E) The certification or endorsement for the service 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 TRANSFER OR EXIT.** A service provider must not 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 Transfer or Exit form approved by the Department and include:

(i) The reason for the transfer or exit; and

(ii) The right of the individual to a hearing as described in subsection

(e) of this section.

# ADMINISTRATIVE RULES

(B) A notice is not required when an individual, or as applicable the individual's legal or designated representative, requests a transfer or exit.

(c) A service 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 transfer or exit.

(d) A service 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 to dispute an involuntary transfer or exit as described in OAR 411-318-0030. If an individual or the legal or designated representative of an individual (as applicable) 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 transfer or exit as described in subsection (c) of this section and the individual or the legal or designated representative of the individual (as applicable) has requested a hearing, the service 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 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 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 the strategies to prevent the exit of the individual from services (unless the individual, or as applicable the legal or designated representative of 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 Transfer or Exit; and

(G) Documentation of the proposed plan for services for the individual 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, or as applicable the legal or designated representative of 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 an individual and include at a minimum:

- (a) The name of the individual considered for transfer;
- (b) The date of the meeting or telephone call;
- (c) Documentation of the participants included in the meeting or telephone call;
- (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 Transfer or Exit; and

(h) The written plan for services for the individual after 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

## 411-325-0400

### Grievance of Entry, Exit, and Transfer

(1) In cases where the individual, or as applicable the individual's legal or designated representative, objects to an entry refusal, a grievance may be filed.

(2) All grievances must be made in writing to the CDDP director or the CDDP director's designee in accordance with the CDDP's dispute resolution policy. The CDDP must provide a written response to the individ-

ual, or as applicable the individual's legal or designated representative, within the timelines specified in the CDDP's dispute resolution policy.

(3) In cases where the CDDP's decision is in dispute, a written grievance must be made to the Department within 10 days of receipt of the CDDP's decision.

(4) Unresolved grievances are reviewed by the Department's director and a written response is provided within 45 days of receipt of the written request for the Department's review. The decision of the Department's director is final.

(5) Documentation of each grievance and resolution must be filed or noted in the individual's record.

Stat. Auth.: ORS 409.050, 410.070, 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; Suspended by APD 24-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14

## 411-325-0430

### Individual Support Plan

(1) A copy of each ISP for an individual and supporting documentation on the required Department forms must be available at the home within 60 days of entry and annually thereafter.

(2) 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 of an individual.

(3) A completed ISP must be documented on the Department required form and include the following:

- (a) The name of the individual and the name of the legal or designated representative of the individual (as applicable);
- (b) A description of the supports required that is consistent with the functional needs assessment of the individual, including the reason the support is necessary;
- (c) The projected dates of when specific supports are to begin and end;

(d) A list of personal, community, and public resources that are available to the individual and how the resources may be applied to provide the required supports. Sources of support may include waiver services, state plan services, state general funds, or natural supports;

(e) The manner in which services are delivered and the frequency of services;

(f) Service provider type for each person responsible for providing services and supports;

(g) The setting in which the individual resides as chosen by the individual;

(h) The strengths and preferences of the individual;

(i) The clinical and support needs as identified through the functional needs assessment;

(j) Individually identified goals and desired outcomes;

(k) The services and supports (paid and unpaid) to assist the individual to achieve identified goals and the providers of the services and supports, including voluntarily provided natural supports;

(l) The risk factors and the measures in place to minimize the risk factors, including back up plans;

(m) The identity of the person responsible for case management and monitoring the ISP;

(n) A provision to prevent unnecessary or inappropriate care; and

(o) The alternative settings considered by the individual.

(4) 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.

(5) The provider must maintain documentation of implementation of each support and services specified in sections (2)(c) to (2)(e) of this rule 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

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## 411-325-0460

### Civil Penalties

(1) For purposes of imposing civil penalties, 24-hour residential programs licensed under ORS 443.400 to 443.455 and 443.991(2) are considered to be long-term care facilities subject to 441.705 to 441.745.

(2) The Department issues the following schedule of penalties applicable to 24-hour residential programs as provided for under ORS 441.705 to 441.745:

(a) Violations of any requirement within any part of the following rules may result in a civil penalty up to \$500 per day for each violation not to exceed \$6,000 for all violations for any licensed 24-hour residential program within a 90-day period:

- (A) 411-325-0025(3), (4), (5), (6), and (7);
- (B) 411-325-0120(2), and (4);
- (C) 411-325-0130;
- (D) 411-325-0140;
- (E) 411-325-0150;
- (F) 411-325-0170;
- (G) 411-325-0190;
- (H) 411-325-0200;
- (I) 411-325-0220(1), and (2);
- (J) 411-325-0230;
- (K) 411-325-0240, 0250, 0260, 0270, 0280, and 0290;
- (L) 411-325-0300, 0340, and 0350;
- (M) 411-325-0360;
- (N) 411-325-0380;
- (O) 411-325-0430(3) and (4); and
- (P) 411-325-0440.

(b) Civil penalties of up to \$300 per day per violation may be imposed for violations of any section of these rules not listed in subsection (a)(A) to (a)(N) of this section if a violation has been cited on two consecutive inspections or surveys of a 24-hour residential program where such surveys are conducted by an employee of the Department. Penalties assessed under this section of this rule may not exceed \$6,000 within a 90-day period.

(3) Monitoring occurs when a 24-hour residential program is surveyed, inspected, or investigated by an employee or designee of the Department or an employee or designee of the Office of State Fire Marshal.

(4) In imposing a civil penalty pursuant to the schedule published in section (2) of this rule, the Department considers the following factors:

(a) The past history of the service provider incurring a penalty in taking all feasible steps or procedures necessary or appropriate to correct any violation;

(b) Any prior violations of statutes or rules pertaining to 24-hour residential programs;

(c) The economic and financial conditions of the service provider incurring the penalty; and

(d) The immediacy and extent to which the violation threatens or threatened the health, safety, or well-being of individuals.

(5) Any civil penalty imposed under ORS 443.455 and 441.710 becomes due and payable when the service provider incurring the penalty receives a notice in writing from the Director of the Department. The notice referred to in this section of this rule is sent by registered or certified mail and includes:

(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; and

(d) A statement of the right of the services provider to request a hearing.

(6) The person representing the service provider to whom the notice is addressed has 20 days from the date of mailing of the notice in which to make a written application for a hearing before the Department.

(7) All hearings are conducted pursuant to the applicable provisions of ORS chapter 183.

(8) If the service provider notified fails to request a hearing within 20 days, an order may be entered by the Department assessing a civil penalty.

(9) If, after a hearing, the service provider is found to be in violation of a license, rule, or order listed in ORS 441.710(1), an order may be entered by the Department assessing a civil penalty.

(10) A civil penalty imposed under ORS 443.455 or 441.710 may be remitted or reduced upon such terms and conditions as the Director of the Department considers proper and consistent with individual health and safety.

(11) If the order is not appealed, the amount of the penalty is payable within 10 days after the order is entered. If the order is appealed and is sus-

tained, the amount of the penalty is payable within 10 days after the court decision. The order, if not appealed or sustained on appeal, constitutes a judgment and may be filed in accordance with the provisions of ORS 183.745. Execution may be issued upon the order in the same manner as execution upon a judgment of a court of record.

(12) A violation of any general order or final order pertaining to a 24-hour residential program issued by the Department is subject to a civil penalty in the amount of not less than \$5 and not more than \$500 for each and every violation.

(13) Judicial review of civil penalties imposed under ORS 441.710 are provided under 183.480, except that the court may, in its discretion, reduce the amount of the penalty.

(14) All penalties recovered under ORS 443.455 and 441.710 to 441.740 are paid into the State Treasury and credited to the General Fund.

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 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 1-2012, f. & cert. ef. 1-6-12; 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

## 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) "Abuse" means "abuse of an adult" as defined in OAR 407-045-0260.

(2) "Abuse Investigation and Protective Services" 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 in 407-045-0310.

(3) "Administrator Review" means the Director of the Department reviews a decision upon request, including the documentation related to the decision, and issues a determination.

(4) "Adult" means an individual 18 years or older with an intellectual or developmental disability.

(5) "Aids to Physical Functioning" means any special equipment prescribed for an individual by a physician, therapist, or dietician that maintains or enhances the individual's physical functioning.

(6) "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 minimum yearly, at the time of an ISP team meeting.

(7) "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.

(8) "Behavior Data Summary" means the document composed by a service 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.

(9) "Board of Directors" means "board of directors" as defined in OAR 411-323-0020.

(10) "Career Development Plan" means the part of an ISP that identifies the employment goals and objectives for an individual, the services and supports needed to achieve those goals, the people, agencies, and providers assigned to assist the individual to attain those goals, the obstacles to the individual working in an individualized job in an integrated employment setting, and the services and supports necessary to overcome those obstacles.

(11) "CDDP" means "community developmental disability program" as defined in OAR 411-320-0020.

(12) "Certificate" means the document issued by the Department to a service provider that certifies the service provider is eligible under the rules in OAR chapter 411, division 323 to receive state funds for the provision of endorsed supported living services.

(13) "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, service providers, services, and service settings. Personal outcomes, goals, and activities are supported in the context of balancing the rights, risks, and personal choices of the individual. Individuals are supported in opportuni-

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ties to make changes when so expressed. Choice may be communicated orally, through sign language, or by other communication methods.

(14) "Complaint" means "complaint" as defined in OAR 411-318-0005.

(15) "Department" means the Department of Human Services.

(16) "Designated Representative" means any adult, such as a parent, family member, guardian, advocate, or other person, authorized in writing by an individual to serve as the representative of the individual in connection with the provision of funded supports, who is not also a paid service provider for the individual. An individual is not required to appoint a designated representative.

(17) "Developmental Disability" means "developmental disability" as defined in OAR 411-320-0020 and described in OAR 411-320-0080.

(18) "Director" means the Director of the Department of Human Services, Office of Developmental Disability Services or the designee of the Director.

(19) "Endorsement" means the authorization to provide supported living services issued by the Department to a certified service provider that has met the qualification criteria outlined in these rules and the rules in OAR chapter 411, division 323.

(20) "Entry" means admission to a Department-funded developmental disability service.

(21) "Executive Director" means the person designated by a board of directors or corporate owner that is responsible for the administration of supported living services.

(22) "Exit" means termination or discontinuance of a Department-funded developmental disability service by a Department licensed or certified service provider.

(23) "Functional Needs Assessment":

(A) Means the comprehensive assessment or re-assessment that:

(A) Documents physical, mental, and social functioning;

(B) Identifies risk factors, choices and preferences, service and support needs, strengths, and goals; and

(C) Determines the service level.

(b) The functional needs assessment for an adult is known as the Adult Needs Assessment. The Department incorporates Version B of the Adult Needs Assessment dated July 1, 2014 into these rules by this reference. The Adult Needs Assessment is maintained by the Department at: [www.dhs.state.or.us/spd/tools/dd/cm/ANA\\_Adult\\_In-home.xls](http://www.dhs.state.or.us/spd/tools/dd/cm/ANA_Adult_In-home.xls). Printed copies may be obtained by calling (503) 945-6398 or writing to the Department of Human Services, Developmental Disabilities, ATTN: Rule Coordinator, 500 Summer Street NE, Salem, OR 97301.

(24) "Hearing" means a contested case hearing subject to OAR 137-003-0501 to 137-003-0070, which results in a final order.

(25) "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.

(26) "Independence" means the extent to which an individual exerts control and choice over his or her own life.

(27) "Individual" means an adult with an intellectual or developmental disability applying for, or determined eligible for, developmental disability services.

(28) "Individual Profile" means the written profile that describes an individual entering into supported living services. The profile may consist of materials or assessments generated by a service provider or other related agencies, consultants, family members, or the legal or designated representative of the individual.

(29) "Integration" as defined in ORS 427.005 means:

(a) The 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 an intellectual or developmental disability participate, together with regular contact with people without an intellectual or developmental disability; and

(c) Individuals with intellectual or developmental disabilities reside in homes or home-like settings that are in proximity to community resources and foster contact with people in the community.

(30) "Intellectual Disability" means "intellectual disability" as defined in OAR 411-320-0020 and described in OAR 411-320-0080.

(31) "Involuntary Transfer" means a service provider has made the decision to transfer an individual and the individual, or as applicable the legal or designated representative of the individual, has not given prior approval.

(32) "ISP" means "Individual Support Plan". An ISP includes the written details of the supports, activities, and resources required for an individual 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 the services and supports that are important for an individual to meet the needs of the individual identified through a functional needs assessment as well as the preferences of the individual for service providers, delivery, and frequency of services and support. The ISP is the plan of care for Medicaid purposes and reflects whether services are provided through a waiver, state plan, or natural supports.

(33) "ISP Team" means a team composed of an individual receiving services and the legal or designated representative of the individual (as applicable), services coordinator, and others chosen by the individual, or as applicable the legal or designated representative of the individual, such as service providers and family members.

(34) "Legal Representative" means an attorney at law who has been retained by or for an individual, a power of attorney for an individual, or a person or agency authorized by a court to make decisions about services for an individual.

(35) "Mandatory Reporter" means any public or private official as defined in OAR 407-045-0260 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 individual has suffered abuse, or comes in contact with any person whom the public or private official has reasonable cause to believe abused the adult individual. Nothing contained in ORS 40.225 to 40.295 affects the duty to report imposed by this definition, except that a psychiatrist, psychologist, clergy, or attorney is not required to report if the communication is privileged under ORS 40.225 to 40.295.

(36) "Medicaid Agency Identification Number" means the numeric identifier assigned by the Department to a service provider following the enrollment of the service provider as described in OAR chapter 411, division 370.

(37) "Medicaid Performing Provider Number" means the numeric identifier assigned to an entity or person by the Department following the enrollment of the entity or person as described in OAR chapter 411, division 370. The Medicaid Performing Provider Number is used by a rendering service provider for identification and billing purposes associated with service authorizations and payments.

(38) "Natural Supports" means the voluntary resources available to an individual from the relatives, friends, significant others, neighbors, roommates, and the community of the individual that are not paid for by the Department.

(39) "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. The information generated in a needs meeting or discussion is used for completion of the functional needs assessment to develop the Transition Plan for the individual.

(40) "OHP Plus" means only the Medicaid benefit packages provided under OAR 410-120-1210(4)(a) and (b).

(41) "OIS" means "Oregon Intervention System". OIS is the system of providing training to people who work with designated individuals to provide elements of positive behavior support and non-aversive behavior intervention. OIS uses principles of pro-active support and describes approved protective physical intervention techniques that are used to maintain health and safety.

(42) "OSIP-M" means "Oregon Supplemental Income Program-Medical" as described in OAR 461-001-0030. OSIP-M is Oregon Medicaid insurance coverage for individuals who meet the eligibility criteria described in OAR chapter 461.

(43) "Person-Centered Planning":

(a) Means a timely and formal or informal process that is driven by an individual, includes people chosen by the individual, ensures that the individual directs the process to the maximum extent possible, and that the individual is enabled to make informed choices and decisions consistent with CFR 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, service providers, and lifestyle preferences;

(B) Design strategies and networks of support to achieve goals and a preferred lifestyle using individual strengths, relationships, and resources; and

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(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.

(44) "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 intervention possible;

(c) Ensures that abusive or demeaning interventions are never used; and

(d) Evaluates the effectiveness of behavior interventions based on objective data.

(45) "Protection" means the necessary actions taken as soon as possible to prevent subsequent abuse or exploitation of an individual, to prevent self-destructive acts, or to safeguard the person, property, and funds of an individual.

(46) "Protective Physical Intervention" means any manual physical holding of, or contact with, an individual that restricts freedom of movement.

(47) "Protective Services" means "protection" as defined in this rule.

(48) "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.

(49) "Program" means "service provider" as defined in this rule.

(50) "Service Level" means the amount of services determined necessary by a functional needs assessment and made available to meet the identified support needs of an individual.

(51) "Service 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.

(52) "Services Coordinator" means "services coordinator" as defined in OAR 411-320-0020.

(53) "Staff" means paid employees responsible for providing services to individuals whose wages are paid in part or in full with funds sub-contracted with the CDDP or contracted directly through the Department.

(54) "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.

(55) "Support" means the assistance that an individual requires, solely because of the effects of an intellectual or developmental disability, to maintain or increase independence, achieve community presence and participation, and improve productivity. Support is subject to change with time and circumstances.

(56) "Supported Living" means the endorsed service that provides the opportunity for individuals to live in a 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.

(57) "These Rules" mean the rules in OAR chapter 411, division 328.

(58) "Transfer" means movement of an individual from one type of service to another type of service administered or operated by the same service provider.

(59) "Transition Plan" means the written plan of services and supports for the period of time between the entry of an individual into a particular service and the development of the ISP for the individual. The Transition Plan is approved by the services coordinator 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 ISP development.

(60) "Unusual Incident" means any incident involving an individual that includes serious illness, accident, death, injury or illness requiring inpatient or emergency hospitalization, a suicide attempt, a fire requiring the services of a fire department, or any incident requiring an abuse investigation.

(61) "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 service provider.

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

## 411-328-0700

### Incident Reports and Emergency Notifications

(1) An incident report, as defined in OAR 411-328-0560, must be placed in the record for an individual upon injury, accident, act of physical aggression, or unusual incident. The incident report must include:

(a) Conditions prior to, or leading to, the incident;

(b) A description of the incident;

(c) Staff response at the time; and

(d) Follow-up to be taken to prevent a recurrence of the incident.

(2) A copy of all incident reports must be sent to the services coordinator within five working days of the incident.

(a) Upon request of the legal representative of an individual, copies of incident reports must be sent to the legal representative within five working days of the incident.

(b) Copies sent to the legal representative of an individual must have any confidential information about other individuals removed or redacted as required by federal and state privacy laws.

(c) Copies of unusual incident reports may not be provided to the legal representative when the report is part of an abuse or neglect investigation.

(3) The service provider must notify the CDDP immediately if an incident or allegation falls within the scope of abuse as defined in OAR 407-045-0260. When an abuse investigation has been initiated, the CDDP must ensure that either the services coordinator or the service provider also immediately notifies the legal or designated representative of the individual (as applicable). The parent, next of kin, or other significant person of the individual may also be notified unless the individual requests the parent, next of kin, or other significant person not be notified about the abuse investigation or protective services, or notification has been specifically prohibited by law.

(4) In the case of a serious illness, injury, or death of an individual, the service provider must immediately notify:

(a) The legal or designated representative, parent, next of kin, and other significant person of the individual (as applicable);

(b) The CDDP; and

(c) Any other agency responsible for the individual.

(5) In the case of an individual who is missing beyond the timeframes established by the ISP team, the service provider must immediately notify:

(a) The designated representative of the individual;

(b) The legal representative of the individual, if any, or nearest responsible relative;

(c) The local police department; and

(d) The CDDP.

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 309-041-0700 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

## 411-328-0720

### Individual Rights, Complaints, Notification of Planned Action, and Hearings

#### (1) INDIVIDUAL RIGHTS.

(a) The service provider must protect the rights of individuals described in subsection (d) of this section and encourage and assist individuals to understand and exercise these rights.

(b) Upon enrollment, request, and annually thereafter, the individual rights described in subsection (d) of this section must be provided to an individual and the legal or designated representative of an individual.

(c) The individual rights described in this rule 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.

(d) While receiving developmental disability services, an individual has the right to:

(A) Be free and protected 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, protective physical intervention, chemical restraint, or mechanical restraint and assured that medication is administered only for the clinical needs of the individual as prescribed by a health care provider, unless an imminent risk

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of physical harm to the individual or others exists and only for as long as the imminent risk continues;

(C) 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;

(D) Informed, voluntary, written consent prior to receiving services, except in a medical emergency or as otherwise permitted by law;

(E) Informed, voluntary, written consent prior to participating in any experimental programs;

(F) A humane service environment that affords reasonable protection from harm, reasonable privacy in all matters that do not constitute a documented health and safety risk to the individual, and access and the ability to engage in private communications with any public or private rights protection program, services coordinator, and others chosen by the individual, through personal visits, mail, telephone, or electronic means;

(G) Contact and visits with legal and medical professionals, legal or designated representatives, family members, friends, advocates, and others chosen by the individual, except where prohibited by court order;

(H) Participate regularly in the community and use community resources, including recreation, developmental disability services, employment services and day support activities, school, educational opportunities, and health care resources;

(I) Access to a free and appropriate public education for children and adults less than 21 years of age, including a procedure for school attendance or refusal to attend.

(J) Reasonable and lawful compensation for performance of labor, except personal housekeeping duties;

(K) Manage the individual's own money and financial affairs unless the right has been taken away by court order or other legal procedure;

(L) Keep and use personal property, personal control and freedom regarding personal property, and a reasonable amount of personal storage space;

(M) Adequate food, housing, clothing, medical and health care, supportive services, and training;

(N) Seek a meaningful life by choosing from available services, service settings, and service providers consistent with the support needs of the individual identified through a functional needs assessment, and enjoying the benefits of community involvement and community integration:

(i) Services must promote independence and dignity and reflect the age and preferences of the individual; and

(ii) The services must be provided in a setting and under conditions that are most cost effective and least restrictive to the liberty of the individual, least intrusive to the individual, and that provide for self-directed decision-making and control of personal affairs appropriate to the preferences, age, and identified support needs of the individual;

(O) 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;

(P) Ongoing opportunity to participate in the planning of services in a manner appropriate to the capabilities of the individual, including the right to participate in the development and periodic revision of the plan for services, the right to be provided with a reasonable explanation of all service considerations through choice advising, and the right to invite others chosen by the individual to participate in the plan for services;

(Q) Request a change in the plan for services;

(R) A timely decision upon request for a change in the plan for services;

(S) Advance written notice of any action that terminates, suspends, reduces, or denies a service or request for service, and notification of other available sources for necessary continued services;

(T) A hearing to challenge an action that terminates, suspends, reduces, or denies a service or request for service;

(U) Exercise all rights set forth in ORS 426.385 and 427.031 if the individual is committed to the Department;

(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), the procedures for reporting abuse, and the procedures for filing complaints, reviews, or requests for hearings if services have been or are proposed to be terminated, suspended, reduced, or denied;

(W) Have these rights and procedures prominently posted in a location readily accessible to individuals and made available to representatives of the individual;

(X) Be encouraged and assisted in exercising all legal, civil, and human rights accorded to other citizens of the same age, except when limited by a court order;

(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; and

(Z) Freedom to exercise all rights described in this rule without any form of reprisal or punishment.

(e) 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, unless specifically prohibited by law in the case of children less than 18 years of age.

(f) An individual who is receiving developmental disability services, or as applicable a legal or designated representative of the individual, has the right under ORS 430.212 to 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.

(g) 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.

(h) Nothing in this rule may be construed to alter any legal rights and responsibilities between a parent and child.

(i) 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 the adult include, but are not limited to, the right to contact and retain counsel and to have access to personal records. (ORS 125.300).

## (2) COMPLAINTS.

(a) Complaints must be addressed in accordance with OAR 411-318-0015.

(b) Upon entry, 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 involuntarily 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, or as applicable the legal or designated representative of the individual, may request a hearing as provided in ORS chapter 183 and OAR 411-318-0025 for involuntary denials, reductions, suspensions, or terminations or 411-318-0030 for involuntary transfers or exits.

(c) Upon entry, 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

## 411-328-0740

### Grievances

(1) The service provider must implement written policies and procedures for individuals' grievances as required by OAR 411-323-0060.

(2) The service provider must send a copy of the grievance to the services coordinator within 15 working days of initial receipt of the grievance.

(3) At entry to service and as changes occur, the service provider must inform each individual, and as applicable the individual's legal or designated representative, orally and in writing of the service provider's grievance policy and procedures and a description of how to utilize them.

Stat. Auth.: ORS 409.050 & 430.662

# ADMINISTRATIVE RULES

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 309-041-0740 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; Suspended by APD 24-2014(Temp), f. & cert. ef. 7-1-  
14 thru 12-28-14

## 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. 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 his or her own home, 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. Prior to an individual receiving supported living services, the ISP team must meet to discuss the projected service needs of the individual in a needs meeting. This 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 any potential service providers, the individual, and other ISP team members;

(c) As part of a functional needs assessment activity, identify the supports required for the individual to live in his or her own home; and

(d) Discuss the selection of potential service providers based on the list of support and services needed.

(3) TRANSITION PLAN. The service provider must spend time getting to know the individual personally before the development of the Transition Plan for the individual. The individual, service 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 for the individual;

(c) Be based on the list of supports identified in the functional needs assessment and consultation required by the ISP team; and

(d) Be in effect and available at the site until the ISP for the individual is developed and approved by the ISP team.

#### (4) INDIVIDUAL SUPPORT PLAN (ISP).

(a) An ISP must be developed and approved by an ISP team, be available at the home of the individual within 30 days of development and approval, and updated at least annually or as changes occur.

(b) The ISP or attached documents must include:

(A) The name of the individual and the name of the legal or designated representative of the individual (as applicable);

(B) A description of the supports required that is consistent with the functional needs assessment of the individual, including the reason the support is necessary;

(C) The projected dates of when specific supports are to begin and end;

(D) A list of personal, community, and public resources that are available to the individual and how the resources may be applied to provide the required supports. Sources of support may include waiver services, state plan services, state general funds, or natural supports;

(E) The manner in which services are delivered and the frequency of services;

(F) Service provider type for each person responsible for providing services and supports;

(G) The setting in which the individual resides as chosen by the individual;

(H) The strengths and preferences of the individual;

(I) The clinical and support needs of the individual as identified through a functional needs assessment;

(J) Individually identified goals and desired outcomes;

(K) The services and supports (paid and unpaid) to assist the individual to achieve identified goals and the providers of the services and supports, including voluntarily provided natural supports;

(L) The risk factors and the measures in place to minimize the risk factors, including back up plans;

(M) The identity of the person responsible for case management and monitoring the ISP;

(N) A provision to prevent unnecessary or inappropriate care; and

(O) The alternative settings considered by 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.

(d) The services coordinator must distribute a copy of the ISP to all ISP team members within 30 calendar days of the ISP team meeting.

#### (5) INDIVIDUAL PROFILE.

(a) The service provider must develop a written profile that describes the individual. This information is used in training new staff. The profile must be completed within 90 days of entry. The profile must include information related to the history or personal highlights of the individual, lifestyle and activity choices and preferences, social network and significant relationships, and other information that helps describe the individual.

(b) The profile must be composed of written information generated by the service 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

## 411-328-0760

### Behavior Support

(1) The service provider must have and implement a written policy for behavior support that utilizes individualized positive behavioral theory and practice and prohibits abusive practices.

(2) The service provider must inform the individual, and as applicable the legal or designated representative of the individual, of the behavior support policy and procedures at the time of entry and as changes occur.

(3) A decision to develop a plan to alter a behavior must be made by the ISP team. Documentation of the ISP team decision must be maintained by the service provider.

(4) The behavior consultant or a trained staff member must conduct a functional behavioral assessment of the behavior that is based upon information provided by one or more people who know the individual. The functional behavioral assessment must include:

(a) A clear, measurable description of the behavior including frequency, duration, and intensity of the behavior (as applicable);

(b) A clear description and justification of the need to alter the behavior;

(c) An assessment of the meaning of the behavior, including the possibility that the behavior is one or more of the following:

(A) An effort to communicate;

(B) The result of a medical condition;

(C) The result of a psychiatric condition; or

(D) The result of environmental causes or other factors.

(d) A description of the context in which the behavior occurs; and

(e) A description of what currently maintains the behavior.

(5) The Behavior Support Plan must include:

(a) An individualized summary of the needs, preferences, and relationships of the individual;

(b) A summary of the function of the behavior as derived from the functional behavioral assessment;

(c) Strategies that are related to the function of the behavior and are expected to be effective in reducing problem behaviors;

(d) Prevention strategies including environmental modifications and arrangements;

(e) Early warning signals or predictors that may indicate a potential behavioral episode and a clearly defined plan of response;

(f) A general crisis response plan that is consistent with OIS;

(g) A plan to address post crisis issues;

(h) A procedure for evaluating the effectiveness of the Behavior Support Plan including a method of collecting and reviewing data on frequency, duration, and intensity of the behavior;

(i) Specific instructions for staff who provide support to follow regarding the implementation of the Behavior Support Plan; and

(j) Positive behavior supports that includes the least intrusive intervention possible.

# ADMINISTRATIVE RULES

(6) Providers must maintain the following additional documentation for implementation of a Behavior Support Plan:

(a) Written evidence that the individual, the legal representative of the individual (if applicable), and the ISP team are aware of the development of the Behavior Support Plan and any objections or concerns have been documented;

(b) Written evidence of the ISP team decision for approval of the implementation of the Behavior Support Plan; and

(c) Written evidence of all informal and positive strategies used to develop an alternative behavior.

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 309-041-0760 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

## 411-328-0770

### Protective Physical Intervention

(1) The service provider must only employ protective physical intervention techniques that are included in the current approved OIS curriculum or as approved by the OIS Steering Committee. Protective physical intervention techniques must only be applied:

(a) When the health and safety of the individual and others are at risk and the ISP team has authorized the procedures in a documented ISP team decision that is included in the ISP and uses procedures that are intended to lead to less restrictive intervention strategies;

(b) As an emergency measure if absolutely necessary to protect the individual or others from immediate injury; or

(c) As a health related protection ordered by a licensed health care provider if absolutely necessary during the conduct of a specific medical or surgical procedure or for the protection of the individual during the time that a medical condition exists.

(2) Staff supporting an individual must be trained by an instructor certified in OIS when the individual has a history of behavior requiring protective physical intervention and the ISP team has determined there is probable cause for future application of protective physical intervention. Documentation verifying OIS training must be maintained in the personnel file for the staff person.

(3) The service provider must obtain the approval of the OIS Steering Committee for any modification of standard OIS protective physical intervention techniques. The request for modification of a protective physical intervention technique must be submitted to the OIS Steering Committee and must be approved in writing by the OIS Steering Committee prior to the implementation of the modification. Documentation of the approval must be maintained in the record for the individual.

(4) Use of protective physical intervention techniques that are not part of an approved Behavior Support Plan in emergency situations must:

(a) Be reviewed by the Executive Director or the designee of the Executive Director within one hour of application;

(b) Be only used until the individual is no longer an immediate threat to self or others;

(c) Result in the submission of an incident report to the services coordinator or other Department designee (if applicable) and the legal representative of the individual (if applicable), no later than one working day after the incident has occurred ; and

(d) Prompt an ISP meeting if emergency protective physical intervention is used more than three times in a six month period.

(5) Any use of protective physical intervention must be documented in an incident report, excluding circumstances described in section (7) of this rule. The report must include:

(a) The name of the individual to whom the protective physical intervention was applied;

(b) The date, type, and length of time the protective physical intervention was applied;

(c) A description of the incident precipitating the need for the use of protective physical intervention;

(d) Documentation of any injury;

(e) The name and the position of the staff member applying the protective physical intervention;

(f) The name and position of any staff member witnessing the protective physical intervention;

(g) The name and position of the person providing the initial review of the use of the protective physical intervention; and

(h) Documentation of a review by the Executive Director or the designee of the Executive Director who is knowledgeable in OIS, as evident by a job description that reflects this responsibility. The review must include the follow-up to be taken to prevent a recurrence of the incident.

(6) A copy of the incident report must be forwarded within five working days of the incident to the services coordinator and the legal representative of the individual (when applicable).

(a) The services coordinator or the Department designee (when applicable) must receive complete copies of incident reports.

(b) Copies of incident reports may not be provided to a legal representative or other service provider when the report is part of an abuse or neglect investigation.

(c) Copies provided to a legal representative or other service provider must have confidential information about other individuals removed or redacted as required by federal and state privacy laws.

(d) All protective physical interventions resulting in injuries must be documented in an incident report and forwarded to the services coordinator or other Department designee (if applicable) within one working day of the incident.

### (7) BEHAVIOR DATA SUMMARY.

(a) The service provider may substitute a behavior data summary in lieu of individual incident reports when:

(A) There is no injury to the individual or others;

(B) The intervention utilized is not a protective physical intervention;

(C) There is a formal written functional behavioral assessment and a written Behavior Support Plan;

(D) The Behavior Support Plan of the individual defines and documents the parameters of the baseline level of behavior;

(E) The protective physical intervention techniques and the behavior for which the protective physical intervention techniques are applied remain within the parameters outlined in the Behavior Support Plan of the individual and OIS curriculum; and

(F) The behavior data collection system for recording observations, interventions, and other support information critical to the analysis of the efficacy of the Behavior Support Plan is also designed to record the items described in section (5)(a)–(c) and (e)–(h) of this rule.

(b) A copy of the behavior data summary must be forwarded every 30 days to the services coordinator or other Department designee (if applicable) and the legal representative of the individual (if 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 309-041-0770 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

## 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 services is subject to eligibility as described in this section.

(a) To be eligible for supported living services, 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 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 461-001-0000) is subject to 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 OSIP-M. This includes, but is not limited to, the following assets:

(i) An annuity that is evaluated according to OAR 461-145-0022;

(ii) A transfer of property when an individual retains a life estate that is evaluated according to OAR 461-145-0310;

(iii) A loan made by an individual that is evaluated according to OAR 461-145-0330; or

(iv) An irrevocable trust that is evaluated according to OAR 461-145-0540;

# ADMINISTRATIVE RULES

(B) When an individual is disqualified for a 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 OSIP-M.

(C) An individual found to have transferred assets is not eligible for supported living services.

## (3) ENTRY.

(a) A service provider must acquire the following information prior to or upon an entry ISP team meeting:

(A) A copy of the eligibility determination document for the 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 any behavioral challenges of the individual, including supervision and support needs;

(D) The medical history of the individual and information on health care supports that includes when available:

(i) The results of a physical exam made within 90 days prior to entry;

(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) Information related to the lifestyle, activities, and other choices and preferences of the individual;

(F) Documentation of the financial resources of the individual;

(G) A written record of any current or recommended medications, treatments, diets, and aids to physical functioning for the individual;

(H) Copies of protocols, risk tracking record, and any support documentation (if applicable);

(I) Copies of documents relating to the guardianship or conservatorship of the individual, health care representation of the individual, or any other legal restriction on the rights of the individual (if applicable); and

(J) A copy of the most recent ISP and Behavior Support Plan and assessment (if applicable).

(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) 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 of the individual;

(D) Documentation of the participants included in the entry meeting;

(E) Documentation of the pre-entry information required by subsection (a) of this section;

(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.

## (4) VOLUNTARY TRANSFERS AND EXITS.

(a) A service provider must promptly notify a services coordinator if an individual, or as applicable the legal or designated representative of the individual, gives notice of the intent of the individual to exit or the individual abruptly exits services.

(b) A service 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) Before a transfer, an individual must be presented with at least three appropriate placement setting options, including at least two different types of residential settings, as described in OAR 411-320-0110.

## (5) INVOLUNTARY TRANSFERS AND EXITS.

(a) A service provider must only 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 service provider;

(D) The individual fails to pay for services; or

(E) The certification or endorsement for the service provider described in OAR chapter 411, division 323 is suspended, revoked, not renewed, or voluntarily surrendered.

(b) NOTICE OF INVOLUNTARY TRANSFER OR EXIT. A service provider must not 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 Transfer or Exit form approved by the Department and include:

(i) The reason for the transfer or exit; and

(ii) The right of the individual to a hearing as described in subsection (d) of this section.

(B) A notice is not required when an individual, or as applicable the legal or designated representative of the individual, requests a transfer or exit.

(c) A service 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 transfer or exit.

(d) HEARING RIGHTS. An individual must be given the opportunity for a hearing under ORS Chapter 183 to dispute an involuntary transfer or exit as described in OAR 411-318-0030. If an individual or the legal or designated representative of the individual (as applicable) 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 transfer or exit as described in subsection (c) of this section and the individual or the legal or designated representative of the individual (as applicable) has requested a hearing, the service 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 is made. Findings of such a 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 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 the strategies to prevent the exit of the individual from services (unless the individual, or as applicable the legal or designated representative of the individual, is requesting the exit);

(F) Documentation of the decision regarding the exit of the individual, including verification of the voluntary decision to transfer or 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.

(b) Requirements for an exit meeting may be waived if an individual is immediately removed from services under the following conditions:

(A) The individual, or as applicable the legal or designated representative of 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 such a 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 meeting or telephone call;

(c) Documentation of the participants included in the meeting or telephone call;

(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, cannot be honored;

(g) Documentation of the voluntary decision to transfer or exit or a copy of the Notice of Involuntary Transfer or Exit; and

(h) The written plan of services for the individual 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

# ADMINISTRATIVE RULES

## 411-328-0800

### Entry, Exit, and Transfer: Appeal Process

(1) In cases where the individual and the individual's parent, guardian, advocate, or the provider objects to, or the ISP team cannot reach majority agreement regarding an admission refusal, an appeal may be filed by any member of the ISP team. In the case of a refusal to serve, the slot must be held vacant but the payment for the slot must continue.

(2) All appeals must be made in writing to the CDDP Director or the CDDP Director's designee for decision using the county's appeal process. The CDDP Director or the CDDP Director's designee must make a decision within 30 working days of receipt of the appeal and notify the appellant of the decision in writing.

(3) The decision of the CDDP may be appealed by the individual, the individual's parent, guardian, advocate, or the provider by notifying the Office of Developmental Disability Services in writing within ten working days of receipt of the county's decision.

(a) A committee is appointed by the Director or the Director's designee in the Office of Developmental Disability Services every two years and is composed of a Department representative, a residential service representative, and a services coordinator;

(b) In case of a conflict of interest, as determined by the Director or the Director's designee, alternative representatives may be temporarily appointed by the Director or the Director's designee to the committee;

(c) The committee reviews the appealed decision and makes a written recommendation to the Director or the Director's designee within 45 working days of receipt of the notice of appeal;

(d) The Director or the Director's designee makes a decision on the appeal within ten working days after receipt of the recommendation from the committee; and

(e) If the decision is for admission or continued placement and the provider refuses admission or continued placement, the funding for the slot may be withdrawn by the contractor.

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 309-041-0800 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; Suspended by APD 24-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14

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**Rule Caption:** Comprehensive In-Home Support for Adults with Intellectual or Developmental Disabilities

**Adm. Order No.:** APD 25-2014(Temp)

**Filed with Sec. of State:** 7-1-2014

**Certified to be Effective:** 7-1-14 thru 12-28-14

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**Rules Amended:** 411-330-0020, 411-330-0030, 411-330-0040, 411-330-0050, 411-330-0060, 411-330-0070, 411-330-0080, 411-330-0090, 411-330-0100, 411-330-0110, 411-330-0130

**Subject:** The Department of Human Services (Department) is immediately amending the rules in OAR chapter 411, division 330 for comprehensive in-home support for adults with intellectual or developmental disabilities.

- OAR 411-330-0020 is being amended to incorporate the general definitions in 411-317-0000 and to update the definitions relating to comprehensive in-home support;

- OAR 411-330-0030 is being amended to reflect correct program eligibility requirements with respect to 1915(k) Community First Choice state plan amendment eligibility;

- OAR 411-330-0040 is being amended to update the conditions under which an individual must exit the comprehensive in home supports program;

- OAR 411-330-0050 is being amended to update language to assure continued availability of services to an individual who transfers case management entities;

- OAR 411-330-0060 is being amended to update language to reflect the completion of the transition period for the implementation of the 1915(k) Community First Choice state plan amendment and to incorporate service parameters associated with the proposed Comprehensive Services 1915(c) Home and Community Based Services waiver;

- OAR 411-330-0070 is being amended to adjust to the adoption of the rules in OAR chapter 411, division 375 by excluding personal support workers from this rule;

- OAR 411-330-0080 is being amended to reflect terminology associated with service descriptions found in the 1915(k) Community First Choice state plan amendment;

- OAR 411-330-0090 is being amended to reflect the terminology associated with the proposed Comprehensive Services 1915(c) Home and Community Based Services waiver and the 1915(k) Community First Choice state plan amendment;

- OAR 411-330-0100 is being amended to adjust to the adoption of the rules in OAR chapter 411, division 375 by excluding personal support workers from this rule;

- OAR 411-330-0110 is being amended to account for changes in service eligibility related to the types of Medicaid eligibility an individual may have and to update the available supports to reflect changes to the proposed Comprehensive Services 1915(c) Home and Community Based Services waiver; and

- OAR 411-330-0130 is being amended to provide a uniform dispute resolution process by incorporating the complaint, Notification of Planned Action, and hearing rules adopted in OAR chapter 411, division 318.

**Rules Coordinator:** Kimberly Colkitt-Hallman — (503) 945-6398

## 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) "Abuse" means "abuse of an adult" as defined in OAR 407-045-0260.

(2) "Abuse Investigation and Protective Services" 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 407-045-0310.

(3) "ADL" means "activities of daily living". ADL are basic personal everyday activities, such as eating, using the restroom, grooming, dressing, bathing, and transferring.

(4) "Adult" means an individual who is 18 years or older with an intellectual or developmental disability.

(5) "Assistive Devices" mean the devices, aids, controls, supplies, or appliances described in OAR 411-330-0110 that are necessary to enable an individual to increase the ability of the individual to perform ADL or to perceive, control, or communicate with the environment in which the individual lives.

(6) "Assistive Technology" means the devices, aids, controls, supplies, or appliances described in OAR 411-330-0110 that are purchased to provide additional security for an individual and replace the need for direct interventions to enable self-direction of care and maximize independence of the individual.

(7) "Attendant Care" means assistance with ADL, IADL, and health-related tasks through cueing, monitoring, reassurance, redirection, set-up, hands-on, standby assistance, and reminding, as described in OAR 411-330-0110.

(8) "Background Check" means a criminal records check and abuse check as defined in OAR 407-007-0210.

(9) "Behavior Consultant" means a contractor with specialized skills who develops a Behavior Support Plan.

(10) "Behavior Support Plan" means the written strategy based on person-centered planning and a functional assessment that outlines specific instructions for a provider to follow to cause the challenging behaviors of an individual to become unnecessary and to change the behavior of the provider, adjust environment, and teach new skills.

(11) "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 ADL, IADL, health related tasks, and cognitive supports to mitigate behavior. Behavior support services are provided in the home or community.

(12) "CDDP" means "community developmental disability program" as defined in OAR 411-320-0020.

(13) "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, service providers, services, and service settings. Personal outcomes, goals, and activities are supported in the context of balancing the rights, risks, and

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personal choices of the individual. Individuals are supported in opportunities to make changes when so expressed. Choice may be communicated orally, through sign language, or by other communication methods.

(14) "Chore Services" mean the services described in OAR 411-330-0110 that are needed to restore a hazardous or unsanitary situation in the home of an individual to a clean, sanitary, and safe environment.

(15) "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.

(16) "Community First Choice (K Plan)" means the state plan amendment authorized under section 1915(k) of the Social Security Act.

(17) "Community Nursing Services" mean the nursing services described in OAR 411-330-0110 that focus on the chronic and ongoing health and safety needs of an individual living in his or her own home. 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 48 and the Oregon State Board of Nursing rules in OAR chapter 851.

(18) "Community Transportation" means the services described in OAR 411-330-0110 that enable an individual to gain access to community-based state plan and waiver services, activities and resources. 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. The area is not determined by the social or recreational groups or activities of an individual.

(19) "Comprehensive Services" means developmental disability services and supports that include 24-hour residential services provided in a licensed home, foster home, or through a supported living program. Comprehensive services are regulated by the Department alone or in combination with an associated Department-regulated employment or day support activities program. Comprehensive services are in-home services provided to an individual with an intellectual or developmental disability when the individual receives case management services from a CDDP. Comprehensive services do not include support services for adults with intellectual or developmental disabilities enrolled in brokerages.

(20) "CPMS" means "Client Process Monitoring System". CPMS is the Department computerized system for enrolling and terminating services for individuals with intellectual or developmental disabilities.

(21) "Day Supports Activities" means "day support activities" in OAR 411-345-0020.

(22) "Department" means the Department of Human Services.

(23) "Designated Representative" means any adult, such as a parent, family member, guardian, advocate, or other person authorized in writing by an individual to serve as the representative of the individual in connection with the provision of funded supports, who is not also a paid service provider for the individual. An individual is not required to appoint a designated representative.

(24) "Developmental Disability" means "developmental disability" as defined in OAR 411-320-0020 and described in 411-320-0080.

(25) "Director" means the Director of the Department of Human Services, Office of Developmental Disability Services, or the designee of the Director.

(26) "Discovery and Career Exploration" means "discovery and career exploration" as defined in OAR 411-345-0020.

(27) "Employer" means, for the purposes of obtaining in-home support through an independent provider as described in these rules, an individual or a person selected by the individual or the legal representative of the individual to act on the behalf of the individual to provide the employer responsibilities described in OAR 411-330-0065. An employer may also be a designated representative.

(28) "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 the individual. Employer-related supports 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 job descriptions;

and

- (d) Fiscal intermediary services.

(29) "Employment Path Services" means "employment path services" as defined in OAR 411-345-0020.

(30) "Employment Services" means "employment services" as defined in OAR 411-345-0020.

(31) "Employment Specialist" means "employment specialist" as defined in OAR 411-345-0020.

(32) "Entry" means admission to a Department-funded licensed or certified developmental disability service provider.

(33) "Environmental Accessibility Adaptations" mean the physical adaptations described in OAR 411-330-0110 that are necessary to ensure the health, welfare, and safety of an individual in his or her own home, or that are necessary to enable the individual to function with greater independence around his or her own home.

(34) "Environmental Safety Modifications" mean the physical adaptations described in OAR 411-330-0110 that are made to the exterior of the home of an individual or the home of the family of the individual as identified in the ISP for the individual to ensure the health, welfare, and safety of the individual or to enable the individual to function with greater independence around the home.

(35) "Exit" means termination or discontinuance of a Department-funded developmental disability service by a licensed or certified provider organization.

(36) "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 supports; and

(C) Determining who may receive family training.

(37) "Family Training" means the training services described in OAR 411-330-0110 that are provided to the family of an individual to increase the capacity of the family to care for, support, and maintain the individual in the home of the individual.

(38) "Fiscal Intermediary" means a person or entity that receives and distributes in-home support funds on behalf of an individual according to the ISP for the individual. The fiscal intermediary acts as an agent for the individual, or as applicable the legal or designated representative of the individual, and performs activities and maintains records related to payroll and payment of employer-related taxes and fees. In this capacity, the fiscal intermediary does not recruit, hire, supervise, evaluate, dismiss, or otherwise discipline employees.

(39) "Founded Reports" 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.

(40) "Functional Needs Assessment":

(a) Means the comprehensive assessment or re-assessment that:

(A) Documents physical, mental, and social functioning;

(B) Identifies risk factors, choices and preferences, service and support needs, strengths, and goals; and

(C) Determines the service level.

(b) The functional needs assessment for an adult is known as the Adult Needs Assessment. The Department incorporates Version B of the Adult Needs Assessment dated July 1, 2014 into these rules by this reference. The Adult Needs Assessment is maintained by the Department at: [www.dhs.state.or.us/spd/tools/dd/cm/ANA\\_Adult\\_In-home.xls](http://www.dhs.state.or.us/spd/tools/dd/cm/ANA_Adult_In-home.xls). Printed copies may be obtained by contacting the Department of Human Services, Developmental Disabilities, ATTN: Rule Coordinator, 500 Summer Street NE, Salem, OR 97301.

(41) "General Business Provider" means an organization or entity selected by an individual, or as applicable the legal or designated representative of the individual, and paid with in-home support funds that:

(a) Is primarily in business to provide the service chosen by the individual, or as applicable the legal or designated representative of the individual, to the general public;

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(b) Provides services 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.

(42) "Home" means the primary residence for an individual 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 support program site.

(43) "Home and Community-Based Waiver Services" mean the services approved by the Centers for Medicare and Medicaid Services in accordance with section 1915(c) and 1115 of the Social Security Act.

(44) "IADL" means "instrumental activities of daily living." IADL include activities other than ADL required to continue independent living such as:

- (a) Meal planning and preparation;
- (b) Budgeting;
- (c) Shopping for food, clothing, and other essential items;
- (d) Performing essential household chores;
- (e) Communicating by phone or other media; and
- (f) Participating in the community.

(45) "ICF/IDD" means an intermediate care facility for individuals with intellectual disabilities.

(46) "IHS" means "in-home support" as defined in this rule.

(47) "Immediate Family" means, for the purpose of determining whether in-home support funds may be used to pay a family member to provide services, the spouse of an adult with an intellectual or developmental disability.

(48) "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.

(49) "Independence" means the extent to which an individual exerts control and choice over his or her own life.

(50) "Independent Provider" means a person selected by an individual, or as applicable the legal or designated representative of the individual, and paid with in-home support funds to directly provide services to the individual.

(51) "Individual" means an adult with an intellectual or developmental disability applying for, or determined eligible for, developmental disability services.

(52) "In-Home Support (IHS)" 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 or the legal or designated representative of the individual (as applicable); and
- (c) Provided in accordance with the ISP for the individual.

(53) "Integration" as defined in ORS 427.005 means:

(a) The 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 an intellectual or developmental disability participate, together with regular contact with people without an intellectual or developmental disability; and

(c) Individuals with intellectual or developmental disabilities reside in homes or home-like settings that are in proximity to community resources and foster contact with people in the community.

(54) "Intellectual Disability" means "intellectual disability" as defined in OAR 411-320-0020 and described in 411-320-0080.

(55) "Intervention" means the action the Department or the designee of the Department requires when an employer fails to meet the employer responsibilities described in OAR 411-330-0065. Intervention includes, but is not limited to:

(a) A documented review of the employer responsibilities described in OAR 411-330-0065;

(b) Training related to employer responsibilities;

(c) Corrective action taken as a result of an independent provider filing a complaint with the Department, the designee of the Department, or other agency who may receive labor related complaints;

(d) Identifying an employer representative if an individual is not able to meet the employer responsibilities described in OAR 411-330-0065; or

(e) Identifying another representative if the current employer representative of an individual is not able to meet the employer responsibilities described in OAR 411-330-0065.

(56) "ISP" means "Individual Support Plan". An ISP includes the written details of the supports, activities, and resources required for an indi-

vidual 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 the services and supports that are important for the individual to meet the needs of the individual identified through a functional needs assessment as well as the preferences of the individual for service 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, state plan, or natural supports.

(57) "Job Coaching" means "Job Coaching" as defined in OAR 411-345-0020.

(58) "Job Development" means "Job Development" as defined in OAR 411-345-0020.

(59) "Legal Representative" means an attorney at law who has been retained by or for an individual, a power of attorney for an individual, or a person or agency authorized by a court to make decisions about services for an individual.

(60) "Mandatory Reporter" means any public or private official as defined in OAR 407-045-0260 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. Nothing contained in ORS 40.225 to 40.295 affects the duty to report imposed by this definition, except that a psychiatrist, psychologist, clergy, or attorney is not required to report if the communication is privileged under 40.225 to 40.295.

(61) "Natural Supports" means the voluntary resources available to an individual from the relatives, friends, significant others, neighbors, roommates, and the community of the individual that are not paid for by the Department.

(62) "Nursing Service Plan" means the plan that is developed by a registered nurse based on an initial nursing assessment, reassessment, or an update made to a nursing assessment as the result of a monitoring visit.

(a) The Nursing Service Plan is specific to an individual and identifies the diagnoses and health needs of the individual and any service coordination, teaching, or delegation activities.

(b) The Nursing Service Plan is separate from the ISP and any service plans developed by other health professionals.

(63) "OHP Plus" means only the Medicaid benefit packages provided under OAR 410-120-1210(4)(a) and (b).

(64) "Oregon Intervention System (OIS)" means the system of providing training to people who work with designated individuals to provide elements of positive behavior support and non-aversive behavior intervention. OIS uses principles of pro-active support and describes approved protective physical intervention techniques that are used to maintain health and safety.

(65) "OSIP-M" means "Oregon Supplemental Income Program-Medical" as described in OAR 461-001-0030. OSIP-M is Oregon Medicaid insurance coverage for individuals who meet the eligibility criteria described in OAR chapter 461.

(66) "Person-Centered Planning":

(a) Means a timely and formal or informal process that is driven by an individual, includes people chosen by the individual, ensures that the individual is enabled to make informed choices and decisions consistent with CFR 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, 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.

(67) "Personal Support Worker" means "personal support worker" as defined in OAR 411-375-0010.

(68) "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 intervention possible;

(c) Ensures that abusive or demeaning interventions are never used; and

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(d) Evaluates the effectiveness of behavior interventions based on objective data.

(69) "Productivity" as defined in ORS 427.005 means:

(a) Engagement in income-producing work by an individual that is measured through improvements in income level, employment status, or job advancement; or

(b) Engagement by an individual in work contributing to a household or community.

(70) "Progress Note" means a written record of an action taken by a services coordinator in the provision of case management, administrative tasks, or direct services to support an individual. A progress note may also be a recording of information related to the services, support needs, or circumstances of the individual which is necessary for the effective delivery of services.

(71) "Provider" means a person, organization, or business selected by an individual, or as applicable the legal or designated representative of the individual, and paid with in-home support funds to provide support to an individual according to the ISP for the individual.

(72) "Provider Organization" means an entity selected by an individual, or as applicable the legal or designated representative of the individual, and paid with in-home support funds that:

(a) Is primarily in business to provide supports for individuals with intellectual or developmental disabilities;

(b) Provides supports for an individual through employees, contractors, or volunteers; and

(c) Receives compensation to recruit, supervise, and pay the person who actually provides support for the individual.

(73) "Relief Care" means the intermittent services described in OAR 411-330-0110 that are provided on a periodic basis for the relief of, or due to the temporary absence of, a person normally providing supports to an individual.

(74) "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.

(75) "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.

(76) "Services Coordinator" means "services coordinator" as defined in OAR 411-320-0020.

(77) "Skills Training" means the activities described in OAR 411-330-0110 that are intended to maximize the independence of an individual through training, coaching, and prompting the individual to accomplish ADL, IADL, and health-related skills.

(78) "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 an intellectual or developmental disability. Social benefits are pre-authorized by a services coordinator and provided according to the description and limits written in an ISP.

(a) Social benefits may not:

(A) Duplicate benefits and services otherwise available to a person regardless of intellectual or developmental disability;

(B) Provide financial assistance with food, clothing, shelter, and laundry needs common to a person with or without an intellectual or developmental disability; or

(C) 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 ISP or prior payment in anticipation of an expense authorized in a previously authorized ISP.

(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.

(79) "Specialized Medical Supplies" mean the medical and ancillary supplies described in OAR 411-330-0110, such as:

(a) Necessary medical supplies, specified in an ISP that are not available under the state plan;

(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.

(80) "State Plan" means Community First Choice or state plan personal care.

(81) "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.

(82) "Support" means the assistance that an individual requires, solely because of the affects of an intellectual or developmental disability, to maintain or increase independence, achieve community presence and participation, and improve productivity. Support is subject to change with time and circumstances.

(83) "Supported Employment — Individual Employment Support" means "Supported Employment — Individual Employment Support" as defined in OAR 411-345-0020.

(84) "Supported Employment — Small Group Employment" means "Supported Employment — Small Group Employment" as defined in OAR 411-345-0020.

(85) "These Rules" mean the rules in OAR chapter 411, division 330.

(86) "Transition Costs" mean the expenses described in OAR 411-330-0110, such as rent and utility deposits, first month's rent and utilities, bedding, basic kitchen supplies, and other necessities required for an individual to make the transition from a nursing facility or ICF/IDD to a community-based home setting where the individual resides.

(87) "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, a fire requiring the services of a fire department, an act of physical aggression, or any incident requiring an abuse investigation.

(88) "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.

(89) "Vehicle Modifications" means the adaptations or alterations described in OAR 411-330-0110 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.

(90) "Waiver Services" means "home and community-based waiver services" as defined in this rule.

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

## 411-330-0030

### Eligibility for In-Home Support Services

(1) An eligible individual may not be denied in-home support services or otherwise discriminated against on the basis of age, diagnostic or disability category, race, color, creed, national origin, citizenship, income, or duration of Oregon residence.

(2) An individual who enters in-home support services is subject to eligibility as described in this section. To be eligible for in-home support services, an individual must:

(a) Be an Oregon resident;

(b) Be determined eligible for developmental disability services by the CDDP of the individual's county of residence as described in OAR 411-320-0080;

(c) Be an adult who is living in his or her own home or the family home who is not receiving other Department-funded in-home or community living support;

(d) Choose to use a CDDP for assistance with design and management of in-home support services;

(e) Be eligible for Community First Choice state plan services; and

(f) Be determined to meet the level of care defined in OAR 411-320-0020.

(3) Individuals are not eligible for services by more than one CDDP unless the concurrent eligibility:

(a) Is necessary to effect transition from one county to another with a change of residence; and

(b) Is part of a collaborative plan developed by both CDDPs in which services and expenditures authorized by one CDDP are not duplicated by the other CDDP.

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 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 25-2013(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

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## 411-330-0040

### In-Home Support Service Entry and Exit

(1) The CDDP must make accurate, up-to-date, written information about in-home support services available to eligible individuals and the individuals' legal or designated representatives. These materials must include:

(a) Criteria for entry, conditions for exit, and how the limits of assistance with purchasing supports are determined;

(b) A description of processes involved in using in-home support services, including person-centered planning, evaluation, and how to raise and resolve concerns about in-home support services;

(c) Clarification of CDDP employee responsibilities as mandatory abuse reporters;

(d) A brief description of an individual's and an individual's legal or designated representative's responsibility for use of public funds; and

(e) An explanation of an individual's right to select and direct providers of services authorized through the individual's ISP and purchased with IHS funds from among those qualified according to OAR 411-330-0070, 411-330-0080, and 411-330-0090, as applicable.

(2) The CDDP must make the information required in section (1) of this rule available using language, format, and presentation methods appropriate for effective communication according to individuals' needs and abilities.

(3) An individual may enter in-home support services when funds are authorized by the CDDP specifically to support the individual.

(4) An eligible individual who has entered a CDDP's in-home support service may continue to receive in-home support services as long as the Department continues to provide funds specifically for that individual through a contract with the CDDP and the individual continues to require the services to remain at home or in the family home.

(5) An individual must exit in-home support services:

(a) At the end of a service period agreed upon by all parties and specified in the individual's ISP;

(b) At the oral or written request of the individual, or as applicable the individual's legal or designated representative, to end the service relationship;

(c) No fewer than 30 days after the CDDP has served the individual, and as applicable the individual's legal or designated representative, written notice of intent to exit the individual from in-home support services when the individual has been determined to no longer meet eligibility for in-home support services as described in OAR 411-330-0030, except when the individual, or as applicable the individual's legal or designated representative, appeals the notice and requests continuing services in accordance with ORS Chapter 183;

(d) When the individual moves from the CDDP's service area, unless services are part of a time-limited plan for transition to a new county of residence;

(e) Upon entry into support services case management services;

(f) Upon entry into another comprehensive service;

(g) When funds to support the individual are no longer authorized by the CDDP of the individual's county of residence;

(h) When the CDDP has sufficient evidence to believe that an individual, or as applicable the individual's legal or designated representative, has engaged in fraud or misrepresentation, failed to use resources as agreed upon in the individual's ISP, refused to cooperate with documenting expenses, or otherwise knowingly misused public funds associated with these services;

(i) After the individual, or as applicable the individual's legal or designated representative, either cannot be located or has not responded after 30 days of repeated attempts by CDDP staff to complete ISP development or monitoring activities; or

(j) Any individual being exited from in home support services must be given written notice of the intent to terminate service consistent with OAR chapter 411, division 318.

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

## 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 individual's legal or designated representative, to establish outcomes, determine needs, plan for supports, and review and redesign support strategies. The planning process must address the individual's basic health and safety needs and supports, including informed decisions by the individual, or as applicable the individual's legal or designated representative, regarding any identified risks.

(3) An individual's services coordinator must authorize an initial ISP that addresses the individual's needs. If the individual has a determined service level, the needs identified in the functional needs assessment must be addressed in the individual's ISP. Prior to services beginning, the ISP must be signed by the individual or the individual's legal or designated representative (as applicable). The ISP and attached documents must include the information described in OAR 411-320-0120, including:

(a) The individual's name and the name of the individual's legal or designated representative (as applicable);

(b) The purpose of ISP activities, addressing one or more of the following:

(A) Independence such as the degree of choice and control an individual hopes to achieve or maintain;

(B) Integration such as the regular access to relationships and community resources the individual hopes to achieve or maintain;

(C) Productivity such as the employment or other contributing roles an individual hopes to achieve or maintain; or

(D) Developing or maintaining the capacity of an individual's family to continue to provide services for the individual in the family home.

(c) A description of the supports required to accomplish the purpose, including a brief statement of the nature of the individual's disability that make the supports necessary. If the individual has a determined service level, the description must be consistent with the individual's functional needs assessment, including the reason the support is necessary;

(d) The projected dates of when specific supports are to begin and end, as well as the end date, if any, of the period of service covered by the ISP;

(e) Projected costs with sufficient detail to support estimates;

(f) A list of personal, community, and public resources that are available to the individual and how the resources may be applied to provide the required supports. Sources of support may include waiver services, state plan services, state general funds, or natural supports;

(g) The manner in which services are delivered and the frequency of services;

(h) Service providers;

(i) The setting in which the individual resides as chosen by the individual;

(j) The individual's strengths and preferences;

(k) If the individual has a determined service level, the clinical and support needs as identified through the functional needs assessment;

(l) Individually identified goals and desired outcomes;

(m) The services and supports (paid and unpaid) to assist the individual to achieve identified goals and the providers of the services and supports, including voluntarily provided natural supports;

(n) The risk factors and the measures in place to minimize the risk factors, including back-up plans;

(o) The identity of the person responsible for case management and monitoring the ISP;

(p) A provision to prevent unnecessary or inappropriate care;

(q) The alternative settings considered by the individual;

(r) Final IHS fund costs;

(s) Schedule of ISP reviews; and

(t) If the individual has a determined service level, any changes in support needs identified through a functional needs assessment.

(4) A Nursing Care Plan must be attached to the ISP when IHS funds are used to purchase care and services requiring the education and training of a licensed professional nurse.

(5) An individual's services coordinator must conduct and document reviews of an individual's ISP and resources with the individual, and as applicable the individual's legal or designated representative, as follows:

# ADMINISTRATIVE RULES

(a) At least quarterly, review and reconcile receipts and records related to purchases of supports with IHS funds; and

(b) At least annually and as major activities or purchases are completed:

(A) Evaluate an individual's progress toward achieving the purposes of the individual's ISP;

(B) Note effectiveness of the use of IHS funds based on the services coordinator's observation as well as the satisfaction of the individual or the individual's legal or designated representative (as applicable); and

(C) Determine whether changing needs or availability of other resources has altered the need for continued use of IHS funds to purchase supports.

(6) 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 individual's ISP for supports.

(7) For an individual transferring from a support services brokerage to in home comprehensive services, the brokerage ISP may be used as authorization for available in home comprehensive services 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

## 411-330-0060

### Assistance with Purchasing In-Home Supports

(1) A CDDP must only use IHS funds to assist an individual, or as applicable the individual's legal or designated representative, to purchase supports when:

(a) The individual's services coordinator has developed a written and approved ISP that meets requirements for development and content as described in OAR 411-330-0050;

(b) For Community First Choice services, the support will address 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; and

(e) The ISP is the most cost-effective plan to safely meet the goals of the individual's ISP.

(2) Goods and services purchased with IHS funds must be provided only as a social benefit as defined in OAR 411-330-0020.

(3) The method, amount, and schedule of payment must be specified in written agreements between the CDDP and the individual and the individual's legal or designated representative (as applicable). The CDDP is specifically prohibited from:

(a) Reimbursing an individual, or as applicable the individual's legal or designated representative or family, for expenses related to services; and

(b) Advancing funds to an individual, or as applicable the individual's legal or designated representative or family, 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 provided:

(a) In settings and under contractual conditions that enable the individual, or as applicable the individual's legal or designated representative, the choice to receive supports and services from another provider;

(b) In a manner consistent with positive behavioral theory and practice as defined in OAR 411-330-0020;

(c) In accordance with applicable state and federal wage and hour regulations in the case of personal care, training, and supervision;

(d) In accordance with applicable state or local building codes in the case of environmental accessibility adaptations to the home; and

(e) According to the Oregon Board of Nursing rules in OAR chapter 851 when services involve performance of nursing care or delegation, teaching, and assignment of nursing tasks.

(5) SERVICE LIMITS. The use of IHS funds to purchase individual supports in any plan year is limited to:

(a) The individual's service level as determined by the functional needs assessment. The functional needs assessment determines a total number of hours available to meet identified needs. This amount may not be exceeded in without prior approval from the Department. The types of services that contribute to the total of hours used are: Attendant Care, Hourly Relief Care, and Skills Training. Attendant Care and Skill Training hours that constitute Day Support Activities contribute to the total of hours used.

(b) Other services and supports determined by the personal agent to be necessary to meet identified support needs.

(c) 108.3 hours per month of Employment Path Services and Individual Supported Employment - Small Group Employment individual-ly or combined.

(d) 40 hours per week of Supported Employment — Individual Employment, not including Job Development. If an individual is receiving less than 25 hours per week of Supported Employment — Individual Employment services, the individual may also receive any combination of Small Group Employment Services, and Employment Path Services, the total of which (including the Supported Employment — Individual Employment services) shall not exceed an annual average of 108.3 hours per month.

(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 an individual's legal or designated representative (as applicable), family (if services are provided 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 fund 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 individual's legal or designated representative (as applicable), the individual's family, 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 individual's ISP.

(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 (6)(a) of this rule does not apply to employees of the individual, the individual's legal or designated representative (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 must not 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:

(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 individual's need 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 an individual's existing employment and alternatives to 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;

# ADMINISTRATIVE RULES

(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, as defined in OAR 411-330-0020;

(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, or as applicable the individual's legal or designated representative, 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; or

(Q) Service in circumstances where the CDDP determines there is sufficient evidence to believe that the individual, the individual's legal or designated representative (as applicable), family, or service 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 services.

(8) The CDDP must inform an individual, and as applicable the individual's legal or designated representative, 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 individual's 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

## 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 QUALIFICATIONS. Each independent provider who is paid as a contractor or a self-employed person, who is not a personal support worker, selected to provide the services and supports in OAR 411-330-0110 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 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's Background Check Request Form must be completed by the subject individual to show intent to work statewide;

(c) Prior background check approval for another Department provider type is inadequate to meet background check requirements for personal support worker enrollment.

(B) Background check approval is effective for two years from the date a personal support worker is hired or contracted with to provide in-home services, except in the following circumstances:

(i) Based on possible criminal activity or other allegations against the personal support worker, 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 personal support worker.

(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 individual's employer of record or designated representative;

(g) Demonstrate by background, education, references, skills, and abilities that he or she is capable of safely and adequately performing the tasks specified on an individual's 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 receiving services;

(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 Office of Inspector General's list of excluded or debarred providers (<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 providing transportation, have a valid driver's license and proof of insurance, 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 service.

(3) Section (1)(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 407-007-0290. The provider must notify the Department or the Department's designee within 24 hours.

(5) BEHAVIOR CONSULTANTS. Behavior consultants are not Personal Support Workers. Behavior consultants providing specialized supports must:

(a) Have education, skills, and abilities necessary to provide behavior consultation services, including knowledge and experience in developing Behavior Support Plans based on positive behavioral theory and practice;

(b) Have received at least two days of training in the Oregon Intervention System and have a current certificate; and

(c) Submit a resume 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 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.

(6) NURSE. A nurse providing community nursing services or skilled nursing is not a personal support worker. The nurse must:

(a) Have a current Oregon nursing license; and

(b) 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.

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

## 411-330-0080

### Standards for Provider Organizations Paid with In-Home Support Funds

(1) A provider organization certified, licensed, and endorsed under OAR chapter 411, division 325 for 24-hour residential services, or licensed under OAR chapter 411, division 360 for adult foster homes, or certified under OAR chapter 411, division 340 for support services, or certified and endorsed under OAR chapter 411, division 345 for employment and alternatives to employment services or OAR chapter 411, division 328 for supported living services, does not require additional certification as an organization to provide relief care, attendant care, skills training, community transportation, or behavior consultation.

(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

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(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

## 411-330-0090

### Standards for General Business Providers

(1) General business providers providing services to individuals and paid with IHS funds must hold any current license appropriate to function required by the state of Oregon or federal law or regulation, including but 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 accessibility adaptations involving building modifications or new construction, a current license and bond as a building contractor as required by OAR chapter 812 (Construction Contractor's Board) or OAR chapter 808 (Landscape Contractors Board);

(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 an individual, and developing cost-effective plans to make homes safe and accessible;

(e) For public transportation providers, the established standards;

(f) For private transportation providers, a business license and drivers licensed to drive in Oregon; and

(g) 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 Division of Medical Assistance Programs if vending medical equipment.

(2) Services provided and paid for with IHS funds must be limited to the services within the scope of the general business provider's 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 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

## 411-330-0100

### Provider Termination

(1) A personal support worker's provider enrollment may be terminated by a brokerage or the Department consistent with OAR chapter 411, division 375.

(2) An independent provider who is not a personal support worker may have their provider enrollment terminated.

(a) Provider enrollment may be terminated when the CDDP or Department determines that, at some point after the provider's initial qualification and authorization to provide supports purchased with IHS 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 services authorized;

(E) Had a founded report of child abuse or substantiated abuse;

(F) Failed to cooperate with the Department or CDDP 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) Not adhered to the provisions of OAR 411-330-0060(6) and OAR 411-330-0070;

(K) Been suspended or terminated as a provider by the Department or Oregon Health Authority;

(L) Violates the requirement to maintain a drug-free work place;

(M) Fails to provide services as required; or

(N) Fails to provide a tax identification number or social security number that matches the independent provider's legal name, as verified by the Internal Revenue Service or Social Security Administration.

(b) If the CDDP makes a decision to terminate a provider's enrollment, the CDDP must issue a written notice that shall include:

(A) An explanation of the reason for termination of the provider enrollment;

(B) The alleged violation as listed in section (a) of this rule; and

(C) The independent provider's appeal rights, including where to file the appeal.

(D) For terminations based on substantiated protective services 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.

(c) The provider may appeal a termination within 30 calendar 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.

(A) A provider of Medicaid services may appeal a termination by requesting an administrative review by the Department's director or their designee.

(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 of the date the termination notice was mailed to the provider.

(d) 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 & 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 5-2010, f. 6-29-10, cert. ef. 7-1-10; 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

## 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) Community First Choice state plan services. An individual who is eligible for OHP Plus and meets Level of Care may access Community First Choice services when supported by an assessed need.

(b) Effective October 1, 2014, an individual receiving medical benefits under OAR 410-200 requesting Medicaid coverage for services in a nonstandard living arrangement (see 461-001-0000) is subject to the rules regarding transfer of assets (see 461-140-0210 to 461-140-0300) in the same manner as if they were requesting these services under OSIPM.

(A) This includes, but is not limited to, the following assets:

(i) An annuity is evaluated according to OAR 461-145-0022;

(ii) A transfer of property when an individual retains a life estate is evaluated according to OAR 461-145-0310;

(iii) A loan made by an individual is evaluated according to OAR 461-145-0330;

(iv) An Irrevocable trust is evaluated according to OAR 461-145-0540;

(B) When an individual will be disqualified for a transfer of assets they must receive a notice meeting the requirements of OAR 461-175-0310 in the same manner as if they were requesting services under OSIPM.

(C) An individual found to have transferred assets is not eligible for Community First Choice Services.

(c) Community First Choice services include:

(A) Community nursing services as described in section (2) of this rule;

(B) Chore services as described in section (3) of this rule;

(C) Attendant care as described in section (4) of this rule;

(D) Skills training as described in section (5) of this rule;

(E) Community transportation as described in section (6) of this rule;

(F) Assistive Devices as described in section (7) of this rule;

(G) Assistive Technology as described in section (8) of this rule;

(H) Relief care as described in section (9) of this rule;

(I) Behavior support services as described in section (10) of this rule;

(J) Environmental accessibility adaptations as described in section (11) of this rule; and

(K) Transition costs as described in section (12) of this rule.

(d) Home and Community-Based Waiver Services. Individuals who are eligible for OSIP-M and meet Level of Care may access Community First Choice Services and the following services:

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(A) 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;
- (iv) Discovery/Career Exploration Services;
- (B) Case management as defined in OAR 411-320-0020;
- (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.

### (2) COMMUNITY NURSING SERVICES.

(a) Community nursing services include:

(A) Evaluation, including medication reviews, and identification of supports that minimize health risks while promoting an individual's autonomy and self-management of healthcare;

(B) Collateral contact with a services coordinator regarding an individual's community health status to assist in monitoring safety and well-being and to address needed changes to the ISP; and

(C) Delegation and training of nursing tasks to an individual's provider so the provider may safely perform health related tasks.

(b) Community nursing services exclude direct nursing care.

(c) Community nursing services are not covered by other Medicaid spending authorities.

(3) 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.

### (4) ATTENDANT CARE SERVICES.

(a) ADL services include but are not limited to:

(A) Basic personal hygiene — providing or assisting with such needs 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) Nutrition -- preparing meals and special diets, 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;

(E) Medication and medical equipment — assisting with ordering, organizing, and administering medications (including pills, drops, ointments, creams, injections, inhalers, and suppositories), monitoring an individual for choking while taking medications, assisting with the administration of medications, maintaining equipment, or monitoring for adequate medication supply; and

(F) Delegated nursing tasks.

(b) IADL services include but are not limited to:

(A) Light housekeeping — tasks necessary to maintain an individual in a healthy and safe environment, including 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) Assistance with necessary medical appointments, including help scheduling appointments, arranging medical transportation services, accompaniment to appointments, follow up from appointments, or assistance with mobility, transfers, or cognition in getting to and from appointments;

(D) Observation of an individual's status and reporting of significant changes to physicians, health care professionals, or other appropriate people;

(E) First aid and handling emergencies, including addressing medical incidents related to conditions such as seizures, aspiration, constipation, or dehydration or responding to an individual's call for help during an emergent situation or for unscheduled needs requiring immediate response; and

(F) Cognitive assistance or emotional support provided to an individual due to an intellectual or developmental disability, including helping the individual cope with change and assisting the individual with decision-making, reassurance, orientation, memory, or other cognitive functions.

(G) Support in the community around socialization, and participation in the community.

(i) Support with socialization includes assisting participants in acquiring, retaining, and improving self-awareness and self-control, social responsiveness, social amenities, and interpersonal skills.

(ii) Support with community participation includes assisting individuals in acquiring, retaining, and improving skills to use available community resources, facilities, or businesses.

(iii) Support with communication provided to assist individuals in acquiring, retaining, and improving expressive and receptive skills in verbal and non-verbal language and the functional application of acquired reading and writing skills.

(c) Attendant care services means an individual requires assistance with ADLs. Assistance 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 of the tasks described in subsection (b) of this section.

(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.

(5) SKILLS TRAINING. Skills training is specifically tied to the functional needs assessment and ISP and is a means for an individual to acquire, maintain, or enhance independence in supports otherwise provided through state plan or waiver services.

(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, the services coordinator must reassess the use of skills training with the individual.

### (6) COMMUNITY TRANSPORTATION.

(a) Community transportation services include but are not limited to:

(A) Community transportation provided by common carriers, 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, health related task or employment goal identified on an ISP; or

(C) Assistance with the purchase of a bus pass.

(b) Community transportation services exclude medical transportation, purchase of individual or family vehicles, routine vehicle maintenance and repair, ambulance services, payment to the spouse of an individual

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receiving in-home support services, and costs for transporting a person other than the individual.

(c) Mileage reimbursement must be limited to those destinations where other members of the individual's local community would typically get similar services.

(d) Community transportation is not provided by the Department to obtain medical or non-medical items that may be delivered by a supplier or sent by mail order without cost to the eligible individual.

(e) Community transportation must be prior authorized by an individual's service coordinator and documented in the individual's service plan. 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 individual's service plan.

(A) Personal support workers who use their own personal vehicle for community transportation are reimbursed according to the terms defined in their Collective Bargaining Agreement between the Home Care Commission and Service Employees International Union, Local 503, OPEU.

(B) The Department or CDDP does not authorize reimbursement for travel to or from the residence of a personal support worker. The Department or CDDP only authorizes community transportation and mileage from the home of an eligible individual to the destination necessary to meet the goal stated in the individual's service plan and back to the individual's home.

(7) ASSISTIVE DEVICES. When assistive devices are primarily and customarily used to serve a medical purpose, the purchase, rental, or repair of assistive devices 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 individual's ability to perform and support ADLs and IADLs or to perceive, control, or communicate with the environment in which the individual lives.

(b) Assistive devices may be purchased with IHS funds when an individual's intellectual or developmental disability otherwise prevents or limits the individual's independence 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) Electronic 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 covered by other Medicaid programs to assist and enhance an individual's independence in performing ADLs or IADLs, such as durable medical equipment, mechanical apparatus, electrical appliances, or information technology devices.

(i) Expenditures for assistive devices are limited to \$5,000 per plan year without Department approval.

(ii) Any single device or assistance costing more than \$500 must be approved by the Department prior to expenditure.

(d) Assistive devices may not include items not of direct medical or remedial benefit to the individual.

(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 medical equipment and supplies furnished under OHP and private insurance;

(B) Determined necessary to the daily functions of the individual; and

(C) Directly related to the disability of the individual.

(g) Assistive devices exclude:

(A) Items that are not necessary or of direct medical or remedial benefit to the individual;

(B) Assistive devices intended to supplant similar items furnished under OHP or private insurance;

(C) Items available through the family, community, or other governmental resources;

(D) Items that are considered unsafe for an individual;

(E) Toys or outdoor play equipment; and

(F) Equipment and furnishings of general household use.

(8) ASSISTIVE TECHNOLOGY Assistive technology to provide additional security and replace the need for direct interventions to enable self-direction of care and maximize independence, such as motion or sound

sensors, two-way communication systems, automatic faucets and soap dispensers, incontinent and fall sensors, or other electronic backup systems;

(a) Expenditures for assistive technology are limited to \$5,000 per plan year without Department approval.

(b) Any single purchase costing more than \$500 must be approved by the Department prior to expenditure.

(9) RELIEF CARE.

(a) Relief care includes two types of care, neither of which may be characterized as daily or periodic services provided to allow an individual's provider to attend school or work.

(A) Twenty-four hour relief care must be provided in segments of 24-hour units that may be sequential but may not exceed 7 consecutive days without permission from the Department.

(B) Hourly relief care is substitute work for the usual attendant care provider.

(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. If relief care is provided in the home of a qualified provider, the personal agent and the individual, or the representative of the individual, must document that the home of the qualified provider is a safe setting for the individual;

(D) The community, during the provision of ADL, IADL, health related tasks, and other supports identified in the ISP.

(10) BEHAVIOR SUPPORT SERVICES.

(a) Behavior support services consist of:

(A) Assessing an individual or the needs of the individual's family and the environment;

(B) Developing positive behavior support strategies, including a Behavior Support Plan if needed;

(C) Implementing the Behavior Support Plan with an individual's 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 an individual's family;

(B) Developing visual communication systems as behavior support strategies; and

(C) Communicating as authorized by an individual, or as applicable the individual's legal or designated representative, 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.

(11) ENVIRONMENTAL ACCESSIBILITY ADAPTATIONS.

(a) Environmental accessibility adaptations 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) Sound and visual monitoring systems;

(H) Installation of ramps, grab-bars, and electric door openers;

(I) Adaptation of kitchen cabinets and sinks;

(J) Widening of doorways;

(K) Handrails;

(L) Modification of bathroom facilities;

(M) Individual room air conditioners for an individual whose temperature sensitivity issues create behaviors or medical conditions that put the individual or others at risk;

(N) Installation of non-skid surfaces;

(O) Overhead track systems to assist with lifting or transferring;

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(P) Specialized electric and plumbing systems that are necessary to accommodate the medical equipment and supplies necessary for the welfare of the individual; and

(Q) Adaptations to control lights, heat, stove, etc.

(b) Environmental accessibility adaptations exclude:

(A) Adaptations or improvements to the home that are of general utility and are not of direct medical or remedial benefit to the individual, such as carpeting, roof repair, and central air conditioning; and

(B) Adaptations that add to the total square footage of the home,

(C) Except for ramps that attach to the home for the purpose of entry or exit, adaptations outside of the home.

(c) Environmental accessibility adaptations are limited to \$5,000 per modification. A services coordinator may request approval for additional expenditures through the Department prior to expenditure. Approval is based on the individual's service and support needs and goals and the Department's determination of appropriateness and cost-effectiveness.

(d) Environmental accessibility adaptations must be tied to supporting ADL, IADL, and health-related tasks as identified in the individual's ISP.

(e) Environmental accessibility adaptations must be completed by a state licensed contractor. 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 provider's file prior to payment.

(f) Environmental accessibility adaptations 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.

(12) TRANSITION COSTS.

(a) Transition costs are limited to individuals transitioning from a nursing facility, ICF/IDD, or acute care hospital to a home or community-based setting where the individual resides.

(b) Transition costs are based on an individual's assessed need 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 Department's approval is based on the individual's need and the Department's determination 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 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 an individual's family to increase the family's capability to care for, support, and maintain the individual in the individual's home.

(a) Family training services include:

(A) Instruction about treatment regimens and use of equipment specified in an individual's ISP;

(B) Information, education, and training about an individual's disability, medical, and behavioral conditions; and

(C) Organized conferences and workshops specifically related to an individual's disability, identified support needs, or specialized medical or behavioral support needs.

(b) Family training services exclude:

(A) Mental health counseling, treatment, or therapy;

(B) Training for paid care providers;

(C) Legal fees;

(D) Training for families 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 ADAPTATIONS.

(a) Materials must be of the most cost effective type and decorative additions will not be considered.

(b) Fencing will be limited to 200 linear feet without approval from DHS to exceed the limit. Large gates such as automobile gates are excluded. Costs for paint and stain are excluded.

(16) VEHICLE MODIFICATIONS. Vehicle modification does not include:

(a) Adaptations or improvements to the vehicle that are of general utility, and are not of direct medical or remedial benefit to the individual;

(b) Purchase or lease of a vehicle; or

(c) Regularly scheduled upkeep and maintenance of a vehicle except upkeep and maintenance of the modifications.

(17) SPECIALIZED MEDICAL SUPPLIES. Specialized Medical supplies will not cover services which are otherwise available to the individual under section 110 of the Rehabilitation Act of 1973, or the IDEA (20 U.S.C. 1401 et seq.). This service will not overlap with, supplant, or duplicate other services provided through the waiver or Medicaid state plan services.

(18) Day support activities must be provided according to OAR 411-345-0025.

(19) Educational services for school age individuals, such as professional instruction, formal training, and tutoring in communication, socialization, and academic skills are not allowable expenses covered by IHS funds.

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

## 411-330-0130

### Complaints, Notification of Planned Action, and Hearings

(1) COMPLAINTS.

(a) Complaints must be addressed in accordance with OAR 411-318-0015.

(b) The CDDP must have and implement written policies and procedures for individual complaints in accordance with OAR 411-318-0015.

(c) Upon enrollment, 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.

(2) NOTIFICATION OF PLANNED ACTION. In the event that a developmental disability service is involuntarily 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.

(3) HEARINGS.

(a) Hearings must be addressed in accordance with ORS Chapter 183 and OAR 411-318-0025.

(b) An individual, or as applicable the legal or designated representative of the individual, may request a hearing as provided in ORS Chapter 183 and OAR 411-318-0025 for involuntary denials, reductions, suspensions, or terminations.

(c) Upon entry, 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).

[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, 430.662 - 430.670

Hist.: SPD 21-2003, f. 12-22-03, cert. ef. 12-28-03; 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

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**Rule Caption:** Support Services for Adults with Intellectual or Developmental Disabilities

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**Rules Amended:** 411-340-0020, 411-340-0060, 411-340-0100, 411-340-0110, 411-340-0120, 411-340-0130, 411-340-0150, 411-340-0160, 411-340-0170

## ADMINISTRATIVE RULES

**Subject:** The Department of Human Services (Department) is immediately updating the rules in OAR chapter 411, division 340 for support services for adults with intellectual or developmental disabilities.

OAR 411-340-0020 is being amended to incorporate the general definitions in OAR 411-317-0000, update the definitions to reflect correct terminology, and include definitions for terms created by the temporary rulemaking.

OAR 411-340-0060 is being updated to provide a uniform dispute resolution process by incorporating the complaint, Notification of Planned Action, and hearing rules adopted in OAR chapter 411, division 318.

OAR 411-340-0100 is being amended to clarify that eligibility for support services is determined by the CDDP of the county of residence according to 411-320-0110.

OAR 411-340-0110 is being amended to refer to the individual's rights adopted in 411-318-0010 that implement Senate Bill 22, incorporate the complaint, Notification of Planned Action, and hearing rules adopted in OAR chapter 411, division 318, and clarify the conditions under which an individual must be exited from support services.

OAR 411-340-0120 is being amended to:

- Come into compliance with monitoring requirements established in the Community First Choice 1915(k) state plan;
- Add requirements for individual participation in assessment processes;
- Provide clarity around transfers from one case management entity to another; and
- Incorporate the requirement for individuals to have a Career Development Plan.

OAR 411-340-0130 is being amended to:

- Account for changes in service eligibility related to the types of Medicaid eligibility an individual may have and incorporate service eligibility requirements related to the transfer of assets in accordance with OAR 461-140-0210 to 461-140-0300;
- Update the language to reflect the completion of the transition period for implementation of the Community First Choice 1915(k) state plan;
- Specify the use of support services funds to purchase individual supports based on assessments and approved waiver language;
- Update the available supports to reflect changes to the proposed Support Services 1915(c) Home and Community Based Services waiver; and
- Specify the circumstances that lead to the inactivation of the provider enrollment for personal support workers and independent providers.

OAR 411-340-0135 Standards for Employers is being adopted to assure the proper authority exists to withdraw employer authority in cases where it is necessary to protect an individual or an employee from misuse. The rule defines indications of misuse of employer authority, the steps that must be taken to remove employer authority, and appeals of the removal.

OAR 411-340-0150 is being amended to reflect the completed transition period for the implementation of the Community First Choice 1915(k) state plan and to make terminology consistent with the proposed Support Services 1915 (c) Home and Community Based Services waiver.

OAR 411-340-0160 is being amended to:

- Incorporate the provider qualification requirements for personal support workers adopted in OAR chapter 411, division 375; and
- Update provider types to reflect changes in the Support Services 1915(c) Home and Community Based Services waiver and the Long Term Care Community Nursing Program.

OAR 411-340-0170 is being amended to:

- Reflect terminology associated with service descriptions found in the Community First Choice 1915(k) state plan;

- Refer to the individual's rights adopted in OAR 411-318-0010 that implement Senate Bill 22 and incorporate the complaint process adopted in OAR chapter 411, division 318; and

- Clarify that the authority to sanction a certified provider organization lies with the Department.

**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) "Abuse" means "abuse of an adult" as defined in OAR 407-045-0260.

(2) "Abuse Investigation and Protective Services" 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 407-045-0310.

(3) "ADL" means "activities of daily living". ADL are basic personal everyday activities, such as eating, using the restroom, grooming, dressing, bathing, and transferring.

(4) "Administrative Review" means "administrator review" as defined in this rule.

(5) "Administrator Review" means the Director of the Department reviews a decision upon request, including the documentation related to the decision, and issues a determination.

(6) "Adult" means an individual who is 18 years or older with an intellectual or developmental disability.

(7) "Alternative Resources" mean possible resources, not including support 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.

(8) "Annual Plan" means the written summary a personal agent completes for an individual who is not enrolled in waiver or Community First Choice services. An Annual Plan is not an ISP and is not a plan of care for Medicaid purposes.

(9) "Assistive Devices" mean the devices, aids, controls, supplies, or appliances described in OAR 411-340-0130 that are necessary to enable an individual to increase the ability of the individual to perform ADL and IADLs or to perceive, control, or communicate with the environment in which the individual lives.

(10) "Assistive Technology" means the devices, aids, controls, supplies, or appliances described in OAR 411-340-0130 that are purchased to provide additional security for an individual and replace the need for direct interventions to enable self direction of care and maximize independence of the individual.

(11) "Attendant Care" means assistance with ADL, IADL, and health-related tasks through cueing, monitoring, reassurance, redirection, set-up, hands-on, standby assistance, and reminding as described in OAR 411-340-0130.

(12) "Background Check" means a criminal records check and abuse check as defined in OAR 407-007-0210.

(13) "Behavior Consultant" means a contractor with specialized skills who develops a Behavior Support Plan.

(14) "Behavior Support Plan" means the written strategy based on person-centered planning and a functional assessment that outlines specific instructions for a provider to follow to cause the challenging behaviors of an individual to become unnecessary and to change the behavior of a provider, adjust environment, and teach new skills.

(15) "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 ADL, IADL, health related tasks, and cognitive supports to mitigate behavior. Behavior support services are provided in the home or community.

(16) "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.

(17) "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.

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(18) "Career Development Plan" means the part of an ISP that identifies the employment goals and objectives for an individual, the services and supports needed to achieve those goals, the people, agencies, and providers assigned to assist the individual to attain those goals, the obstacles to the individual working in an individualized job in an integrated employment setting, and the services and supports necessary to overcome those obstacles.

(19) "Case Management" means the functions performed by a services coordinator or personal agent. Case management includes determining service eligibility, developing a plan of authorized services, and monitoring the effectiveness of services and supports.

(20) "Case Management Contact" means a reciprocal interaction between a personal agent and an individual or the legal or designated representative of the individual (as applicable).

(21) "CDDP" means "community developmental disability program" as defined in OAR 411-320-0020.

(22) "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.

(23) "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. Personal outcomes, goals, and activities are supported in the context of balancing the rights, risks, and personal choices of the individual. Individuals are supported in opportunities to make changes when so expressed. Choice may be communicated orally, through sign language, or by other communication methods.

(24) "Choice Advising" means the impartial sharing of information about case management and other service delivery options available to individuals with intellectual or developmental disabilities provided by a person that meets the qualifications identified in OAR 411-340-0150(5).

(25) "Chore Services" mean the services described in OAR 411-340-0130 that are needed to restore a hazardous or unsanitary situation in the home of an individual to a clean, sanitary, and safe environment.

(26) "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.

(27) "Community First Choice (K Plan)" means the state plan amendment authorized under section 1915(k) of the Social Security Act.

(28) "Community Nursing Services" mean the nursing services described in OAR 411-340-0130 that focus on the chronic and ongoing health and safety needs of an individual living in his or her own home. 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.

(29) "Community Transportation" means the services described in OAR 411-340-0130 that enable an individual to gain access to community-based state plan and waiver services, activities, and resources. 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. The area is not determined by the social or recreational groups or activities of an individual.

(30) "Complaint" means "complaint" as defined in OAR 411-318-0005.

(31) "Comprehensive Services" means developmental disability services and supports that include 24-hour residential services provided in a licensed home, foster home, or through a supported living program. Comprehensive services are regulated by the Department alone or in combination with an associated Department-regulated employment or day support activities program. Comprehensive services are in-home services provided to an individual with an intellectual or developmental disability when the individual receives case management services from a CDDP. Comprehensive services do not include support services for adults with intellectual or developmental disabilities enrolled in brokerages.

(32) "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 programs available from the Department, the utilization of assistive devices, natural supports, environmental modifications, and alternative resources. Less costly alternatives may include resources not paid for by the Department.

(33) "CPMS" means "Client Process Monitoring System". CPMS is the Department computerized system for enrolling and terminating services for individuals with intellectual or developmental disabilities.

(34) "Crisis" means "crisis" as defined in OAR 411-320-0020.

(35) "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.

(36) "Day" means a calendar day unless otherwise specified in these rules.

(37) "Day Support Activities" means "day support activities" as defined in OAR 411-345-0020.

(38) "Delegation" means that a registered nurse authorizes an unlicensed 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 47. Delegation by a physician is also allowed.

(39) "Department" means the Department of Human Services.

(40) "Designated Representative" means any adult, such as a parent, family member, guardian, advocate, or other person authorized in writing by an individual to serve as the representative of the individual in connection with the provision of funded supports, who is not also a paid provider for the individual. An individual is not required to appoint a designated representative.

(41) "Developmental Disability" means "developmental disability" as defined in OAR 411-320-0020 and described in OAR 411-320-0080.

(42) "Director" means the Director of the Department of Human Services, Office of Developmental Disability Services, or the designee of the Director.

(43) "Discovery and Career Exploration" means "discovery and career exploration" as defined in OAR 411-345-0020.

(44) "Emergent Status" means an individual has been determined to be eligible for crisis diversion services according to OAR 411-320-0160.

(45) "Employer" means, for the purposes of obtaining in-home support through an independent provider as described in these rules, an individual or a person selected by the individual or the legal representative of the individual to act on the behalf of the individual to provide the employer responsibilities described in OAR 411-340-0135. An employer may also be a designated representative.

(46) "Employer-Related Supports" mean the activities that assist an individual, and when applicable the legal or designated representative or family members of an individual, with directing and supervising provision of services described in the ISP for the individual. Employer-related supports 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 job descriptions;

and

- (d) Fiscal intermediary services.

(47) "Employment Path Services" means "employment path services" as defined in OAR 411-345-0020.

(48) "Employment Services" means "employment services" as defined in OAR 411-345-0020.

(49) "Employment Specialist" means "employment specialist" as defined in OAR 411-345-0020.

(50) "Entry" means admission to a Department-funded developmental disability service.

(51) "Environmental Accessibility Adaptations" mean the physical adaptations described in OAR 411-340-0130 that are necessary to ensure the health, welfare, and safety of an individual in his or her own home, or that are necessary to enable the individual to function with greater independence around his or her own home.

(52) "Environmental Safety Modifications" mean the physical adaptations described in OAR 411-340-0130 that are made to the exterior of the home of an individual or the home of the family of the individual as identified in the ISP for the individual to ensure the health, welfare, and safety of the individual or to enable the individual to function with greater independence around the home.

(53) "Exit" means termination or discontinuance of a Department-funded developmental disability service by a licensed or certified provider organization.

(54) "Family":

## ADMINISTRATIVE RULES

(4) 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.

(55) "Family Training" means the training services described in OAR 411-340-0130 that are provided to the family of an individual to increase the capacity of the family to care for, support, and maintain the individual in the home of the individual.

(56) "Fiscal Intermediary" means a person or entity that receives and distributes support services funds on behalf of an individual, who employs a provider to provide services, supervision, or training to the individual in the home or community of the individual according to the ISP for the individual.

(57) "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.

(58) "Functional Needs Assessment":

(a) Means the comprehensive assessment or re-assessment that:

(A) Documents physical, mental, and social functioning;

(B) Identifies risk factors, choices and preferences, service and support needs, strengths, and goals; and

(C) Determines the service level.

(b) The functional needs assessment for an adult is known as the Adult Needs Assessment. The Department incorporates Version B of the Adult Needs Assessment dated July 1, 2014 into these rules by this reference. The Adult Needs Assessment is maintained by the Department at: [www.dhs.state.or.us/spd/tools/dd/cm/ANA\\_Adult\\_In-home.xls](http://www.dhs.state.or.us/spd/tools/dd/cm/ANA_Adult_In-home.xls). Printed copies may be obtained by calling (503) 945-6398 or writing the Department of Human Services, Developmental Disabilities, ATTN: Rule Coordinator, 500 Summer Street NE, Salem, OR 97301.

(59) "General Business Provider" means an organization or entity selected by an individual, or as applicable the legal or designated representative of the individual, and paid with support services funds that:

(a) Is primarily in business to provide the service chosen by the individual, or as applicable the legal or designated representative of the individual, to the general public;

(b) Provides services 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.

(60) "Hearing" means "hearing" as defined in OAR 411-318-0005.

(61) "Home" means the primary residence for an individual 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 support program site.

(62) "Home and Community-Based Waiver Services" mean the services approved by the Centers for Medicare and Medicaid Services in accordance with section 1915(c) and 1115 of the Social Security Act.

(63) "IADL" means "instrumental activities of daily living". IADL include activities other than ADL required to continue independent living such as:

(a) Meal planning and preparation;

(b) Budgeting;

(c) Shopping for food, clothing, and other essential items;

(d) Performing essential household chores;

(e) Communicating by phone or other media; and

(f) Participating in the community.

(64) "ICF/IDD" means an intermediate care facility for individuals with intellectual disabilities.

(65) "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.

(66) "Independence" means the extent to which an individual exerts control and choice over his or her own life.

(67) "Independent Provider" means a person selected by an individual, or as applicable the legal or designated representative of the individual, and paid with support services funds to directly provide services to the individual.

(68) "Individual" means an adult with an intellectual or developmental disability applying for, or determined eligible for, developmental disability services.

(69) "Integration" as defined in ORS 427.005 means:

(a) The 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 an intellectual or developmental disability participate, together with regular contact with people without an intellectual or developmental disability; and

(c) Individuals with intellectual or developmental disabilities reside in homes or home-like settings that are in proximity to community resources and foster contact with people in the community.

(70) "Intellectual Disability" means "intellectual disability" as defined in OAR 411-320-0020 and described in 411-320-0080.

(71) "Intervention" means the action the Department or the designee of the Department requires when an employer fails to meet the employer responsibilities described in OAR 411-340-0135. Intervention includes, but is not limited to:

(a) A documented review of the employer responsibilities described in OAR 411-340-0135;

(b) Training related to employer responsibilities;

(c) Corrective action taken as a result of an independent provider filing a complaint with the Department, the designee of the Department, or other agency who may receive labor related complaints;

(d) Identifying an employer representative if an individual is not able to meet the employer responsibilities described in OAR 411-340-0135; or

(e) Identifying another representative if the current employer representative of an individual is not able to meet the employer responsibilities described in OAR 411-340-0135.

(72) "ISP" means "Individual Support Plan". An ISP includes the written details of the supports, activities, and resources required for an individual 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 the services and supports that are important for the individual to meet the needs of the individual identified through a functional needs assessment as well as the preferences of the individual for service 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, state plan, or natural supports.

(73) "Job Coaching" means "job coaching" as defined in OAR 411-345-0020.

(74) "Job Development" means "job development" as defined in OAR 411-345-0020.

(75) "Legal Representative" means an attorney at law who has been retained by or for an individual, a power of attorney for an individual, or a person or agency authorized by a court to make decisions about services for an individual.

(76) "Level of Care" means an individual meets the following institutional level of care for an ICF/IDD:

(a) The individual has 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.

(77) "Mandatory Reporter" means any public or private official as defined in OAR 407-045-0260 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. Nothing contained in ORS 40.225 to 40.295 affects the duty to report imposed by this definition, except that a psychiatrist, psychologist, clergy, or attorney is not required to report if the communication is privileged under 40.225 to 40.295.

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(78) “Natural Supports” means the voluntary resources available to an individual from the relatives, friends, significant others, neighbors, roommates, and the community of the individual that are not paid for by the Department.

(79) “Nursing Service Plan” means the plan that is developed by a registered nurse based on an initial nursing assessment, reassessment, or an update made to a nursing assessment as the result of a monitoring visit.

(a) The Nursing Service Plan is specific to an individual and identifies the diagnoses and health needs of the individual and any service coordination, teaching, or delegation activities.

(b) The Nursing Service Plan is separate from the ISP and any service plans developed by other health professionals.

(80) “OHP Plus” means only the Medicaid benefit packages provided under OAR 410-120-1210(4)(a) and (b).

(81) “OSIP-M” means “Oregon Supplemental Income Program-Medical” as described in OAR 461-001-0030. OSIP-M is Oregon Medicaid insurance coverage for individuals who meet the eligibility criteria described in OAR chapter 461.

(82) “Person-Centered Planning”:

(a) Means a timely and formal or informal process that is driven by an individual, includes people chosen by the individual, ensures that the individual directs the process to the maximum extent possible, and that the individual is enabled to make informed choices and decisions consistent with CFR 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, service providers, 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.

(83) “Personal Agent” means a person who is a case manager for the provision of case management services, works directly with individuals and the legal or designated representatives and families of individuals to provide or arrange for support services as described in these rules, meets the qualifications set forth in OAR 411-340-0150(5), and 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. A personal agent is the person-centered plan coordinator of an individual as defined in the Community First Choice state plan amendment.

(84) “Personal Support Worker” means “personal support worker” as defined in OAR 411-375-0010.

(85) “Plan Year” means not more than 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.

(86) “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.

(87) “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 intervention possible;

(c) Ensures that abusive or demeaning interventions are never used; and

(d) Evaluates the effectiveness of behavior interventions based on objective data.

(88) “Primary Caregiver” means the person identified in an ISP as providing the majority of service and support for an individual in the home of the individual.

(89) “Productivity” as defined in ORS 427.005 means:

(a) Engagement in income-producing work by an individual that is measured through improvements in income level, employment status, or job advancement; or

(b) Engagement by an individual in work contributing to a household or community.

(90) “Progress Note” means a written record of an action taken by a personal agent in the provision of case management, administrative tasks, or direct services to support an individual. A progress note may also be a recording of information related to the services, support needs, or circumstances of the individual which is necessary for the effective delivery of support services.

(91) “Protection” means “protective services” as defined in this rule.

(92) “Protective Physical Intervention” means any manual physical holding of, or contact with, an individual that restricts freedom of movement.

(93) “Protective Services” mean the necessary actions taken as soon as possible to prevent subsequent abuse or exploitation of an individual, to prevent self-destructive acts, or to safeguard the person, property, and funds of an individual.

(94) “Provider” means a person, organization, or business selected by an individual, or as applicable the legal or designated representative of an individual, and paid with support services funds to provide support to an individual according to the ISP for the individual.

(95) “Provider Organization” means an entity selected by an individual, or as applicable the legal or designated representative of the individual, and paid with support services funds that:

(a) Is primarily in business to provide supports for individuals with intellectual or developmental disabilities;

(b) Provides supports for an individual through employees, contractors, or volunteers; and

(c) Receives compensation to recruit, supervise, and pay the person who actually provides support for the individual.

(96) “Provider Organization Director” means the Director of a provider organization who is responsible for the administration and provision of services according to these rules, or the designee of the Director of the provider organization.

(97) “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.

(98) “Quality Assurance” means a systematic procedure for assessing the effectiveness, efficiency, and appropriateness of services.

(99) “Regional Crisis Diversion Program” means “Regional Crisis Diversion Program” as defined in OAR 411-320-0020.

(100) “Relief Care” means the intermittent services described in OAR 411-340-0130 that are provided on a periodic basis for the relief of, or due to the temporary absence of, a person normally providing supports to an individual.

(101) “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 with an intellectual or developmental disability, together with freely-chosen family and friends, to plan a life with necessary support services rather than purchasing a pre-defined program;

(b) Authority. The ability for an individual with an intellectual or developmental disability, 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 with an intellectual or developmental disability to live a life in the community rich in community affiliations; and

(d) Responsibility. The acceptance of a valued role of an individual with an intellectual or developmental disability 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.

(102) “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.

(103) “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.

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(104) “Services Coordinator” means “services coordinator” as defined in OAR 411-320-0020.

(105) “Skills Training” means the activities described in OAR 411-340-0130 that are intended to maximize the independence of an individual through training, coaching, and prompting the individual to accomplish ADL, IADL, and health-related skills.

(106) “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 an intellectual or developmental disability. Social benefits are pre-authorized by a personal agent and provided according to the description and limits written in an ISP.

(a) Social benefits may not:

(A) Duplicate benefits and services otherwise available to a person regardless of intellectual or developmental disability;

(B) Provide financial assistance with food, clothing, shelter, and laundry needs common to a person with or without an intellectual or developmental disability; or

(C) 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 ISP or prior payment in anticipation of an expense authorized in a previously authorized ISP.

(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.

(107) “Special Diet” means the specially prepared food or particular types of food described in OAR 411-340-0130 that are specific to the medical condition or diagnosis of an individual and in support of an evidence-based treatment regimen.

(108) “Specialized Medical Supplies” mean the medical and ancillary supplies described in OAR 411-340-0130, such as:

(a) Necessary medical supplies, specified in an ISP that are not available under the state plan;

(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.

(109) “State Plan” means Community First Choice or state plan personal care.

(110) “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.

(111) “Support” means the assistance that an individual requires, solely because of the affects of an intellectual or developmental disability, to maintain or increase independence, achieve community presence and participation, and improve productivity. Support is subject to change with time and circumstances.

(112) “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 or the legal or designated representative of the individual (as applicable);

(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.

(113) “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.

(114) “Support Services Expenditure Guideline” means the guidelines that describe allowable uses for support services 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/adults/ss\\_exp\\_guide.pdf](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, Developmental Disabilities, ATTN: Rule Coordinator, 500 Summer Street NE, Salem, Oregon 97301.

(115) “Support Services Funds” mean the public funds designated by the brokerage for assistance with the purchase of supports according to an Individual Support Plan.

(116) “Supported Employment — Individual Employment Support” means “supported employment — individual employment support” as defined in OAR 411-345-0020.

(117) “Supported Employment — Small Group Employment Support” means “supported employment — small group employment support” as defined in OAR 411-345-0020.

(118) “These Rules” mean the rules in OAR chapter 411, division 340.

(119) “Transition Costs” mean the expenses described in OAR 411-340-0130, such as rent and utility deposits, first month’s rent and utilities, bedding, basic kitchen supplies, and other necessities required for an individual to make the transition from a nursing facility or ICF/IDD to a community-based home setting where the individual resides.

(120) “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, a fire requiring the services of a fire department, an act of physical aggression, or any incident requiring an abuse investigation.

(121) “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.

(122) “Vehicle Modifications” mean the adaptations or alterations described in OAR 411-340-0130 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.

(123) “Waiver Services” means “home and community-based waiver services” as defined in this rule.

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

## 411-340-0060

### Complaints, Notification of Planned Action, and Hearings

#### (1) COMPLAINTS.

(a) Complaints must be addressed in accordance with OAR 411-318-0015.

(b) The brokerages must have and implement written policies and procedures for individual complaints in accordance with OAR 411-318-0015.

(c) Upon enrollment, 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.

(2) NOTIFICATION OF PLANNED ACTION. In the event that a developmental disability service is involuntarily 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.

#### (3) HEARINGS.

(a) Hearings must be addressed in accordance with ORS chapter 183 and OAR 411-318-0025.

(b) An individual, or as applicable the legal or designated representative of the individual, may request a hearing as provided in ORS chapter 183 and OAR 411-318-0025 for involuntary denials, reductions, suspensions, or terminations.

(c) Upon entry, 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, 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 309-041-1800, 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 25-2010(Temp), f. & cert. ef. 11-17-10 thru 5-16-11; (Temp) Repealed by SPD 10, 2011, f. & cert. ef. 5-5-11; 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

# ADMINISTRATIVE RULES

## 411-340-0100

### Eligibility for Support Services

(1) Individuals determined eligible according to this rule may not be denied brokerage services or otherwise discriminated against on the basis of age, diagnostic or disability category, race, color, creed, national origin, citizenship, income, or duration of Oregon residence.

(2) Eligibility for support services is determined by the CDDP of the county of residence of an individual according to OAR 411-320-0110(8).

(3) Individuals are not eligible for services by more than one brokerage unless the concurrent eligibility:

(a) Is necessary to affect transition from one brokerage to another;

(b) Is part of a collaborative plan between the affected brokerages; and

(c) Does not duplicate services and expenditures.

Stat. Auth.: ORS 409.050, 427.402 & 430.662

Stats. Implemented: ORS 427.005, 427.007, 427.40-427.410, 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 309-041-1840, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08; SPD 8-2009, f. & cert. ef. 7-1-09; SPD 18-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 21-2011(Temp), f. & cert. ef. 8-31-11 thru 12-28-11; 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

## 411-340-0110

### Standards for Support Service Brokerage Entry and Exit

(1) The brokerage must make accurate, up-to-date, information about the brokerage available to individuals referred for services and the legal or designated representatives of individuals. This information must include:

(a) A declaration of brokerage philosophy;

(b) A brief description of the services provided by the brokerage, including typical timelines for activities;

(c) A description of processes involved in using the services, including application and referral, assessment, planning, and evaluation;

(d) A declaration of brokerage employee responsibilities as mandatory abuse reporters;

(e) A brief description of individual responsibilities for use of public funds;

(f) An explanation of the individual rights in OAR 411-318-0010, including the right of an individual to:

(A) Choose a brokerage from among Department-contracted brokerages in the county of residence of an individual that is serving less than the total number of individuals specified in the current contract between the brokerage and the Department;

(B) Choose a personal agent among those available in the selected brokerage;

(C) Select providers among those willing, available, and qualified according to OAR 411-340-0160, 411-340-0170, and 411-340-0180 to provide supports authorized through the ISP for the individual;

(D) Direct the services of providers; and

(E) Raise and resolve concerns about brokerage services, including specific rights to notification of planned action and hearings according to OAR 411-340-0060 and the rules in OAR chapter 411, division 318.

(g) Indication that additional information about the brokerage is available on request. The additional information must include, but not be limited to:

(A) A description of the organizational structure of the brokerage;

(B) A description of any contractual relationships the brokerage has in place, or may establish, to accomplish the brokerage functions required by rule; and

(C) A description of the relationship between the brokerage and the Policy Oversight Group of the brokerage.

(2) The brokerage must make the information required in section (1) of this rule available using language, format, and presentation methods appropriate for effective communication according to the needs and abilities of individuals.

(3) ENTRY INTO BROKERAGE SERVICES.

(a) To enter brokerage services:

(A) An individual must be determined eligible according to OAR 411-320-0110(8); and

(B) The individual, or as applicable the legal or designated representative of the individual, must choose to receive services from a selected brokerage.

(b) The Department may implement guidelines that govern entries when the Department has determined that such guidelines are prudent and necessary for the continued development and implementation of support services.

(c) The brokerage may not accept individuals for entry beyond the total number of individuals specified in the current contract between the brokerage and the Department.

(4) EXIT FROM A BROKERAGE.

(a) An individual must exit a brokerage:

(A) At the oral or written request of an individual, or as applicable the legal or designated representative of the individual, to end the service relationship;

(B) After an individual, or as applicable the legal or designated representative of the individual, either cannot be located or has not responded after 30 days of repeated attempts by brokerage staff to complete ISP development or monitoring activities;

(C) Upon the entry of an individual into CDDP case management services;

(D) When an individual is incarcerated or admitted to a medical hospital, psychiatric hospital, sub-acute facility, nursing facility, ICF/IDD, or other 24-hour residential program and it is determined that the individual is not returning home or is not returning home after 90 consecutive days; or

(E) When an individual does not reside in Oregon or resides in an area outside the geographic service area of the brokerage.

(b) In the event an individual exits a brokerage, a written Notification of Planned Action must be provided as described in OAR 411-340-0060 and OAR chapter 411, division 318.

(c) Each brokerage must have policies and procedures for notifying the CDDP of the county of residence of an individual when the individual plans to exit, or exits, brokerage services. Notification method, timelines, and content must be based on agreements between the brokerage and the CDDP of each county in which the brokerage provides 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 309-041-1850, 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 8-2008, f. 6-27-08, cert. ef. 6-29-08; SPD 8-2009, f. & cert. ef. 7-1-09; SPD 21-2011(Temp), f. & cert. ef. 8-31-11 thru 12-28-11; SPD 27-2011, f. & cert. ef. 12-28-11; DVA 3-2007, f. & cert. ef. 9-25-07; 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

## 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 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, or as applicable the legal or designated representative of the individual, regarding the nature of supports or other steps taken to ameliorate any identified risks; and

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(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 working 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 working 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, or as applicable the legal or designated representative of 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, or as applicable the legal or designated representative of the individual, and all current providers within 10 working 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) OSIP-M/OHP PLUS ELIGIBILITY. If an individual loses OSIP-M or OHP Plus eligibility, a personal agent must assist the individual in identifying why OSIP-M or OHP Plus eligibility was lost. Whenever possible, the personal agent must assist the individual in becoming eligible for OSIP-M or OHP Plus again. The personal agent must document efforts taken to assist the individual in becoming OSIP-M 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 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 note for an individual. 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. 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.

(8) LEVEL OF CARE DETERMINATION.

(a) The brokerage must assure that an individual who is eligible for services identified in OAR 411-340-0130(7) or who becomes eligible for the services after entry into the brokerage:

(A) Receives a level of care determination;

(B) Is offered the choice between home and community-based services or institutional care;

(C) Is provided a notice of fair hearing rights; and

(D) Has the level of care determination reviewed annually 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 determination must be documented in a progress note in the record for the individual. The level of care determination must be completed no more than two months prior to the authorization of the ISP for the individual and no more than 60 days prior to the annual reauthorization of the ISP.

(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 waiver or Community First Choice services.

(a) A functional needs assessment must be completed:

(A) Prior to the development of an initial ISP;

(B) Within 60 days prior to the annual renewal of an ISP; and

(C) Within 45 days from the date an individual, or as applicable the legal or designated representative of the individual, requests a functional needs assessment.

(b) Individuals must be notified of the need for re-assessment at least 14 days prior to the expiration of the most recent assessment.

(c) The assessment must be conducted face to face.

(d) An individual, or 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 re-assessments 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 re-assessment within the applicable time frame results in a 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, or as applicable the legal or designated representative of the individual, prevent timely participation in the functional needs assessment or timely submission of information necessary to complete the functional needs assessment.

(10) INDIVIDUAL SUPPORT PLANS.

(a) An individual who is accessing waiver or Community First Choice services must have an authorized ISP.

(A) The ISP must be facilitated, developed, and authorized by a personal agent.

(B) The initial ISP must be authorized;

(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.

(C) 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. Commensurate with the level of need of the individual and the scope of services and supports, the ISP must include:

(A) The name of the individual and the name of the legal or designated representative of the individual (as applicable);

(B) A description of the supports required that is consistent with support needs identified in the assessment of the individual, including the reason the support is necessary;

(C) The projected dates of when specific supports are to begin and end;

(D) A list of personal, community, and public resources that are available to the individual and how the resources may be applied to provide the required supports. Sources of support may include waiver services, state plan services, state general funds, or natural supports;

(E) The manner in which services are delivered and the frequency of services;

(F) The providers of supports to be purchased with support services funds or the type of provider, such as an independent provider, provider organization, or general business provider, when the provider is unknown or is likely to change frequently;

(G) The setting in which the individual resides as chosen by the individual;

(H) The strengths and preferences of the individual;

(I) Individually identified goals and desired outcomes;

(J) The services and supports (paid and unpaid) to assist the individual to achieve identified goals and the providers of the services and supports, including voluntarily provided natural supports;

(K) The risk factors and the measures in place to minimize the risk factors, including back up plans;

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(L) The identity of the person responsible for case management and monitoring the ISP;

(M) A provision to prevent unnecessary or inappropriate care;

(N) The alternative settings considered by the individual;

(O) Schedule of ISP reviews;

(P) Any changes in support needs identified in an assessment; and

(Q) Any revisions to the ISP that may alter:

(i) The amount of support services funds required;

(ii) The amount of support services required;

(iii) Types of support purchased with support services funds; and

(iv) The type of support provider.

(c) **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 or the legal or designated representative of the individual (as applicable).

(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.

(d) **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 verbal 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 verbal agreement may substitute for a signature for no more than 10 working 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, the CDDP ISP may be used as authorization for available support services for up to 90 days.

(e) **PERIODIC REVIEW OF ISP AND RESOURCES.**

(A) A personal agent must conduct 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 services.

(A) A personal agent must complete an Annual Plan within 60 days of the enrollment of an individual into support services, and annually thereafter if the individual is not enrolled in any waiver or Community First Choice 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 funds are used to purchase services requiring the education and training of a licensed professional nurse.

(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.

(13) **CASE MANAGEMENT TRANSITION TO ANOTHER BROKERAGE OR TO A CDDP.** At the request of an individual enrolled in brokerage services, or as applicable the legal or designated representative of the individual, who has selected another brokerage or CDDP, the brokerage must collaborate with the receiving brokerage or CDDP of the county of residence 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 working days. A transfer of case management services must occur within ten working 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 working days. A transfer of case management services to the available brokerage must occur within ten working days of the request unless a later date is mutually agreed upon by the individual, the brokerage, and the CDDP of the county of residence 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 request for 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

## 411-340-0130

### Using Support Services Funds to Purchase Supports

(1) Support services funds may be used to assist individuals to purchase supports defined in OAR 411-340-0130(7), in accordance with an ISP when:

(a) The supports are necessary for an individual to live in the individual's own home or in the individual's family home or meet individual support needs;

(b) For Community First Choice services, the support will address 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 home and community-based waiver services or Community First Choice state plan services;

(e) Cost-effective arrangements for obtaining the required supports, applying public, private, formal, and informal resources available to the eligible individual are specified in the individual's ISP;

(A) Support services funds are not intended to replace the resources available to an individual from the individual's natural supports. Support services funds may be authorized only when the individual's natural supports are unavailable, insufficient, or inadequate to meet the needs of the individual.

(B) Support services funds are not available when an individual's support needs may be met by alternative resources. Support services funds may

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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.

(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 individual's 18th birthday, 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 individual's 18th birthday;

(b) The Social Security Administration or the Department's Presumptive Medicaid Disability Determination Team 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 or OSIP-M.

(4) Goods and services purchased with support services funds on behalf of individuals are provided only as social benefits.

(5) SERVICE LIMITS. The use of support services funds to purchase individual supports is limited to:

(a) The individual's service level as determined by the functional needs assessment. The functional needs assessment determines a total number of hours available to meet identified needs. This amount may not be exceeded without prior approval from the Department. The types of services that contribute to the total of hours used are: Attendant Care, Hourly Relief Care, Skills Training, Attendant Care and Skill Training hours that constitute Day Support Activities contribute to the total of hours used.

(b) Other services and supports determined by the personal agent to be necessary to meet identified support needs.

(c) An average of 108.3 hours per month of Employment Path Services and Individual Supported Employment — Small Group Employment Support individually or combined.

(d) 40 hours per week of Supported Employment — Individual Employment Support, not including Job Development. If an individual is receiving less than 25 hours per week of Supported Employment — Individual Employment Support, the individual may also receive any combination of Small Group Employment Support, and Employment Path Services, the total of which (including the Supported Employment — Individual Employment services) shall not exceed an annual average of 108.3 hours per month.

(6) 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 individuals' families for expenses related to services and from advancing funds to individuals or individuals' families to obtain services.

(b) The method and schedule of payment must be specified in written agreements between the brokerage and the individual or the individual's legal or designated representative (as applicable).

(7) TYPES OF SUPPORTS. Supports eligible for purchase with support services funds must be consistent with published Expenditure Guidelines and are limited to:

(a) Community First Choice services. An individual who is eligible for OHP Plus and meets Level of Care may access Community First Choice services.

(b) Effective October 1, 2014, an individual receiving medical benefits under OAR 410-200 requesting Medicaid coverage for services in a nonstandard living arrangement (see OAR 461-001-0000) is subject to the rules regarding transfer of assets (see OAR 461-140-0210 to 461-140-0300) in the same manner as if they were requesting these services under OSIPM. This includes, but is not limited to, the following assets:

(A) An annuity is evaluated according to OAR 461-145-0022;

(B) A transfer of property when an individual retains a life estate is evaluated according to OAR 461-145-0310;

(C) A loan made by an individual is evaluated according to OAR 461-145-0330;

(D) An Irrevocable trust is evaluated according to OAR 461-145-0540.

(c) When an individual will be disqualified for a transfer of assets they must receive a notice meeting the requirements of OAR 461-175-0310 in the same manner as if they were requesting services under OSIPM.

(d) An individual found to have transferred assets is not eligible for Community First Choice Services.

(e) Community First Choice services include:

(A) Community nursing services as described in section (8) of this rule;

(B) Chore services as described in section (9) of this rule;

(C) Attendant care as described in section (10) of this rule;

(D) Skills training as described in section (11) of this rule;

(E) Community transportation as described in section (12) of this rule;

(F) Assistive Devices as described in section (13) of this rule;

(G) Assistive Technology as described in section (14) of this rule;

(H) Relief care as described in section (15) of this rule;

(I) Behavior support services as described in section (16) of this rule;

(J) Environmental accessibility adaptations as described in section (17) of this rule; and

(K) Transition costs as described in section (18) of this rule.

(f) Home and Community Based Waiver Services. Individuals who are eligible for OSIP-M and meet Level of Care may access Community First Choice Services and the following services:

(A) Case management as defined in OAR 411-340-0020;

(B) Employment Services as described in section (19) of this rule that include:

(i) Supported employment — Individual Employment Support;

(ii) Supported Employment — Small Group Employment Support;

(iii) Employment Path Services;

(iv) Discovery/Career Exploration Services.

(C) Family training as described in section (20) of this rule;

(D) Special diets as described in section (21) of this rule;

(E) Environmental Safety Adaptations as described in section (22) of this rule;

(F) Vehicle modifications as described in section (23) of this rule; and

(G) Specialized Medical Supplies as described in section (24) of this rule.

(g) State Plan personal care as described in OAR chapter 411, division 034.

(8) COMMUNITY NURSING SERVICES.

(a) Community nursing services include:

(A) Evaluation, including medication reviews, and identification of supports that minimize health risks while promoting an individual's autonomy and self-management of healthcare;

(B) Collateral contact with a personal agent regarding an individual's community health status to assist in monitoring safety and well-being and to address needed changes to the person-centered ISP; and

(C) Delegation and training of nursing tasks to an individual's provider so the provider may safely perform health related tasks.

(b) Community nursing services exclude direct nursing care.

(c) Community nursing services are not covered by other Medicaid spending authorities.

(9) 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.

(10) ATTENDANT CARE SERVICES.

(a) ADL services include but are not limited to:

(A) Basic personal hygiene — providing or assisting with such needs 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;

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(D) Nutrition — preparing meals and special diets, 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;

(E) Medication and medical equipment including but not limited to assisting with ordering, organizing, and administering medications (including pills, drops, ointments, creams, injections, inhalers, and suppositories), monitoring an individual for choking while taking medications, assisting with the administration of medications, maintaining equipment, or monitoring for adequate medication supply; and

(F) Delegated nursing tasks.

(b) IADL services include but are not limited to:

(A) Light housekeeping — tasks necessary to maintain an individual in a healthy and safe environment, including 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) Assistance with necessary medical appointments, including help scheduling appointments, arranging medical transportation services, accompaniment to appointments, follow up from appointments, or assistance with mobility, transfers, or cognition in getting to and from appointments;

(D) Observation of an individual's status and reporting of significant changes to physicians, health care professionals, or other appropriate people;

(E) First aid and handling emergencies, including addressing medical incidents related to conditions such as seizures, aspiration, constipation, or dehydration or responding to an individual's call for help during an emergent situation or for unscheduled needs requiring immediate response; and

(F) Cognitive assistance or emotional support provided to an individual due to an intellectual or developmental disability, including helping the individual cope with change and assisting the individual with decision-making, reassurance, orientation, memory, or other cognitive functions.

(G) Social support in the community around socialization, and participation in the community.

(i) Support with socialization includes assisting participants in acquiring, retaining, and improving self-awareness and self-control, social responsiveness, social amenities, and interpersonal skills.

(ii) Support with community participation, includes assisting individuals in acquiring, retaining, and improving skills to use available community resources, facilities, or businesses.

(H) Support with communication provided to assist individuals in acquiring, retaining, and improving expressive and receptive skills in verbal and non-verbal language and the functional application of acquired reading and writing skills.

(c) Attendant care services means an individual requires assistance with ADLs. Assistance 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 of the tasks described in subsection (b) of this section.

(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.

(11) SKILLS TRAINING. Skills training is specifically tied to the functional needs assessment and ISP and is a means for an individual to acquire, maintain, or enhance independence in supports otherwise provided through state plan or waiver services.

(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, the personal agent must reassess the use of skills training with the individual.

(12) COMMUNITY TRANSPORTATION.

(a) Community transportation services include but are not limited to:

(A) Community transportation provided by common carriers, 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, health related task or employment goal identified on an ISP; or

(C) Assistance with the purchase of a bus pass.

(b) Community transportation services exclude medical transportation, purchase of individual or family vehicles, routine vehicle maintenance and repair, ambulance services, payment to the spouse of an individual receiving support services, and costs for transporting a person other than the individual.

(c) Mileage reimbursement must be limited to those destinations where other members of the individual's local community would typically get similar services.

(d) Community transportation is not provided by the Department to obtain medical or non-medical items that may be delivered by a supplier or sent by mail order without cost to the eligible individual.

(e) Community transportation must be prior authorized by an individual's personal agent and documented in the individual's service plan. 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 individual's service plan.

(A) Personal support workers who use their own personal vehicle for community transportation are reimbursed according to the terms defined in their Collective Bargaining Agreement between the Home Care Commission and Service Employees International Union, Local 503, OPEU.

(B) The Department or brokerage does not authorize reimbursement for travel to or from the residence of a personal support worker. The Department or brokerage only authorizes community transportation and mileage from the home of an eligible individual to the destination necessary to meet the goal stated in the individual's service plan and back to the individual's home.

(13) Assistive Devices. When assistive devices are primarily and customarily used to serve a medical purpose, the purchase, rental, or repair of assistive devices with support service funds 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 an individual to increase the individual's ability to perform and support ADLs and IADLs or to perceive, control, or communicate with the environment in which the individual lives.

(b) Assistive devices may be purchased with support service funds when an individual's intellectual or developmental disability otherwise prevents or limits the individual's independence 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) Electronic 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 covered by other Medicaid programs, to assist and enhance an individual's independence in performing ADLs or IADLs, such as durable medical equipment, mechanical apparatus, electrical appliances, or information technology devices.

(i) Expenditures for assistive devices are limited to \$5,000 per plan year without Department approval.

(ii) Any single device or assistance costing more than \$500 must be approved by the Department prior to expenditure.

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(d) Assistive devices may not include items not of direct medical or remedial benefit to the individual.

(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 medical equipment and supplies furnished under OHP and private insurance;

(B) Determined necessary to the daily functions of the individual; and  
(C) Directly related to the disability of the individual.

(g) Assistive devices exclude:

(A) Items that are not necessary or of direct medical or remedial benefit to the individual;

(B) Assistive devices intended to supplant similar items furnished under OHP or private insurance;

(C) Items available through the family, community, or other governmental resources;

(D) Items that are considered unsafe for an individual;

(E) Equipment and furnishings of general household use.

(14) ASSISTIVE TECHNOLOGY Assistive technology to provide additional security and replace the need for direct interventions to enable self direction of care and maximize independence, such as motion or sound sensors, two-way communication systems, automatic faucets and soap dispensers, incontinent and fall sensors, or other electronic backup systems;

(a) Expenditures for assistive technology are limited to \$5,000 per plan year without Department approval.

(b) Any single purchase costing more than \$500 must be approved by the Department prior to expenditure.

(15) RELIEF CARE.

(a) Relief care includes two types of care, neither of which may be characterized as daily or periodic services provided to allow an individual's primary caregiver to attend school or work.

(A) Twenty-four hour relief care must be provided in segments of 24-hour units that may be sequential but may not exceed 7 consecutive days without permission from the Department.

(B) Hourly relief care is substitute work for the usual attendant care provider.

(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. If relief care is provided in the home of a qualified provider, the personal agent and the individual, or the representative of the individual, must document that the home of the qualified provider is a safe setting for the individual;

(D) The community, during the provision of ADL, IADL, health related tasks, and other supports identified in the ISP.

(16) BEHAVIOR SUPPORT SERVICES.

(a) Behavior support services consist of:

(A) Assessing an individual or the needs of the individual's family and the environment;

(B) Developing positive behavior support strategies, including a Behavior Support Plan if needed;

(C) Implementing the Behavior Support Plan with an individual's 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 an individual's family;

(B) Developing visual communication systems as behavior support strategies; and

(C) Communicating as authorized by an individual, or as applicable the individual's legal or designated representative, 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 needs of an individual at school;

(E) An assessment in a school setting;

(F) Attendant Care;

(G) Skills Training; or

(H) Relief Care.

(17) ENVIRONMENTAL ACCESSIBILITY ADAPTATIONS.

(a) Environmental accessibility adaptations 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) Sound and visual monitoring systems;

(H) Installation of ramps, grab-bars, and electric door openers;

(I) Adaptation of kitchen cabinets and sinks;

(J) Widening of doorways;

(K) Handrails;

(L) Modification of bathroom facilities;

(M) Individual room air conditioners for an individual whose temperature sensitivity issues create behaviors or medical conditions that put the individual or others at risk;

(N) Installation of non-skid surfaces;

(O) Overhead track systems to assist with lifting or transferring;

(P) Specialized electric and plumbing systems that are necessary to accommodate the medical equipment and supplies necessary for the welfare of the individual; and

(Q) Adaptations to control lights, heat, stove, etc.

(b) Environmental accessibility adaptations exclude:

(A) Adaptations or improvements to the home that are of general utility and are not of direct medical or remedial benefit to the individual, such as carpeting, roof repair, and central air conditioning;

(B) Adaptations that add to the total square footage of the home except for ramps that attach to the home for the purpose on entry or exit;

(C) Adaptations outside of the home; and

(D) General repair or maintenance and upkeep required for the home, including repair of damage caused by the individual.

(c) Environmental accessibility adaptations are limited to \$5,000 per modification. A personal agent may request approval for additional expenditures through the Department prior to expenditure. Approval is based on the individual's service and support needs and goals and the Department's determination of appropriateness and cost-effectiveness.

(d) Environmental accessibility adaptations must be tied to supporting ADL, IADL, and health-related tasks as identified in the individual's ISP.

(e) Environmental accessibility adaptations must be completed by a state licensed contractor. 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 provider's file prior to payment.

(f) Environmental accessibility adaptations 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.

(18) TRANSITION COSTS.

(a) Transition costs are limited to individuals transitioning from a nursing facility, ICF/IDD, or acute care hospital, to a home or community-based setting where the individual resides.

(b) Transition costs are based on an individual's assessed need 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 Department's approval is based on the individual's need and the Department's determination 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.

(19) Employment services must be:

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(a) Delivered according to OAR 411-345-0025; and  
(b) Provided by an employment specialist meeting the requirements described in OAR 411-345-0030.

(20) **FAMILY TRAINING.** Family training services are provided to an individual's family to increase the family's capability to care for, support, and maintain the individual in the home.

(a) Family training services include:

(A) Instruction about treatment regimens and use of equipment specified in an individual's ISP;

(B) Information, education, and training about an individual's disability, medical, and behavioral conditions; and

(C) Organized conferences and workshops specifically related to an individual's disability, identified support needs, or specialized medical or behavioral support needs.

(b) Family training services exclude:

(A) Mental health counseling, treatment, or therapy;

(B) Training for paid care providers;

(C) Legal fees;

(D) Training for families 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.

(21) **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 an individual's medical condition or diagnosis that are needed to sustain an individual in the individual's home. Special diets are supplements and are not intended to meet an individual's complete daily nutritional requirements.

(22) **ENVIRONMENTAL SAFETY ADAPTATIONS.**

(a) Materials must be of the most cost effective type and decorative additions will not be considered.

(b) Fencing will be limited to 200 linear feet without approval from DHS to exceed the limit. Large gates such as automobile gates are excluded. Costs for paint and stain are excluded.

(23) **VEHICLE MODIFICATIONS.** Vehicle modification does not include:

(a) Adaptations or improvements to the vehicle that are of general utility, and are not of direct medical or remedial benefit to the individual;

(b) Purchase or lease of a vehicle; or

(c) Regularly scheduled upkeep and maintenance of a vehicle except upkeep and maintenance of the modifications.

(24) **SPECIALIZED MEDICAL SUPPLIES.** Specialized Medical supplies will not cover services which are otherwise available to the individual under section 110 of the Rehabilitation Act of 1973, or the IDEA (20 U.S.C. 1401 et seq.). This service will not overlap with, supplant, or duplicate other services provided through the waiver or Medicaid state plan services.

(25) Day support activities must be provided according to OAR 411-345-0025.

(26) **EDUCATIONAL SERVICES.** 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 provided:

(a) In settings and under contractual 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, employment 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) 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.

(c) In accordance with applicable state and federal wage and hour regulations in the case of personal services, training, and supervision;

(d) In accordance with applicable state or local building codes in the case of environmental accessibility adaptations to the home;

(e) In accordance with Oregon Board of Nursing rules in OAR chapter 851 when services involve performance of nursing services or delegation, teaching, and assignment of nursing tasks;

(f) In accordance with OAR 411-340-0160 through 411-340-0180 governing provider qualifications and responsibilities; and

(g) In accordance with the Department's Support Services 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, or as applicable the individual's legal or designated representative, 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 individual's family, 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 an individual's ISP.

(d) The provisions of section (31) 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) A personal support worker's provider enrollment may be inactivated or terminated consistent with OAR 411-375-0070.

(b) An Independent Provider who is not a Personal Support Worker.

(A) The provider enrollment for 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 personal support worker is no longer providing in-home services in Oregon;

(iii) The background check for a provider results in a closed case pursuant to OAR 407-007-0325;

(iv) 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

(v) 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.

(B) An independent provider who is not a personal support worker may have their provider enrollment terminated when the brokerage or Department determines that, at some point after the provider's initial qualification and authorization to provide supports purchased with support services funds, the 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 abuse;

(vi) Failed to cooperate with any Department or brokerage investigation or grant access to, or furnish, records or documentation, as requested;

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(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) Failed to comply with the provisions of section (30) of this rule or OAR 411-340-0140;

(xi) Been suspended or terminated as a provider by the Department or Oregon Health Authority;

(xii) Violates the requirement to maintain a drug-free work place;

(xiii) Fails to provide services as required;

(xiv) Fails to provide a tax identification number or social security number that matches the independent provider's legal name, as verified by the Internal Revenue Service or Social Security Administration; or

(xv) Has been excluded or debarred by the Office of the Inspector General.

(C) If the brokerage or Department makes a decision to terminate a provider's enrollment, the brokerage or Department must issue a written notice that shall include:

(i) An explanation of the reason for termination of the provider enrollment;

(ii) The alleged violation as listed in subsection (b) of this section; and

(iii) The independent provider's appeal rights, including where to file the appeal.

(iv) For terminations based on substantiated protective services 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.

(v) The effective date of the termination.

(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's review by the Department's director or their designee.

(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.

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

## 411-340-0135

### Standards for Employers

(1) An employer of record is required when a personal support worker who is not an independent contractor is selected by the family to provide supports. The Department may not act as the employer of record.

(2) **JOB DESCRIPTION.** The employer is responsible for creating and maintaining a job description for potential independent providers that is in coordination with the services authorized in the ISP.

(3) **PERSONAL SUPPORT WORKER BENEFITS.** The only benefits available to independent providers are for those who are personal support workers and 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. Independent providers, including personal support workers, are not state or brokerage employees.

(4) **EMPLOYER RESPONSIBILITIES.**

(a) For an individual to be eligible for support provided by an independent provider, an employer must demonstrate the ability to:

(A) Locate, screen, and hire a qualified independent provider;

(B) Supervise and train the independent provider;

(C) Schedule work, leave, and coverage;

(D) Track the hours worked and verify the authorized hours completed by the independent provider;

(E) Recognize, discuss, and attempt to correct, with the independent provider, any performance deficiencies and provide appropriate, progressive, disciplinary action as needed; and

(F) Discharge an unsatisfactory independent provider.

(b) Indicators that an employer may not be meeting the employer responsibilities described in subsection (4)(a) of this section include but are not limited to:

(A) Independent provider complaints;

(B) Multiple complaints from an independent provider requiring intervention from the Department or Brokerage;

(C) Frequent errors on time sheets, mileage logs, or other required documents submitted for payment that results in repeated coaching from the Department or Brokerage;

(D) Complaints to Medicaid Fraud involving the employer; or

(E) Documented observation by the Brokerage of services not being delivered as identified in the individual's ISP.

(c) The Department or the Brokerage may require intervention as defined in OAR 411-340-0020 when an employer has demonstrated difficulty meeting the employer responsibilities described in subsection (4)(a) of this section.

(d) After appropriate intervention and assistance, an individual unable to meet the employer responsibilities described in subsection (4)(a) of this section may be determined ineligible for support provided by an independent provider.

(A) An individual determined ineligible to be an employer of an independent provider and unable to designate an employer representative, may not request support provided by an independent provider until the individual's next annual ISP. Improvements in health and cognitive functioning may be factors in demonstrating the individual's ability to meet the employer responsibilities described in section (4)(a) of this rule. If an individual is able to demonstrate the ability to meet the employer responsibilities sooner than the next annual ISP, the individual may request the waiting period be shortened.

(B) An individual determined ineligible to be an employer of an independent provider is offered other available service options that meet the individual's service needs, including support through a contracted qualified provider organization or general business provider when available.

(5) **DESIGNATION OF EMPLOYER RESPONSIBILITIES.**

(a) An individual not able to meet all of the employer responsibilities described in section (4)(a) of this rule must:

(A) Designate an employer representative in order to receive or continue to receive in home support; or

(B) Select other available services.

(b) An individual able to demonstrate the ability to meet some of the employer responsibilities described in section (4)(a) of this rule must:

(A) Designate an employer representative to fulfill the responsibilities the individual is not able to meet to receive or continue to receive support from an independent provider; and

(B) On a Department approved form, document the specific employer responsibilities performed by the individual and the employer responsibilities performed by the individual's employer representative.

(c) When an individual's employer representative is not able to meet the employer responsibilities described in section (4)(a) or the qualifications in section (6)(c) of this rule, an individual must:

(A) Designate a different employer representative to receive or continue to receive in home support; or

(B) Select other available services.

(6) **EMPLOYER REPRESENTATIVE.**

(a) An individual, or the individual's legal representative, may designate an employer representative to act on behalf of the individual, to meet the employer responsibilities described in section (4)(a) of this rule. An individual's legal or designated representative may be the employer.

(b) An employer who is also an individual's independent provider of support must seek an alternate employer for purposes of the independent provider's employment. The alternate employer must:

(A) Track the hours worked and verify the authorized hours completed by the independent provider; and

(B) Document the specific employer responsibilities performed by the employer on a Department approved form.

(c) The Department or the Brokerage may suspend, terminate, or deny an individual's request for an employer representative if the requested employer representative has:

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(A) A history of substantiated abuse of an adult as described in OAR 411-045-0250 to 411-045-0370;

(B) A history of founded abuse of a child as described in ORS 419B.005;

(C) Participated in billing excessive or fraudulent charges; or

(D) Failed to meet the employer responsibilities in section (4)(a) or (6)(b) of this rule, including previous termination as a result of failing to meet the employer responsibilities in section (4)(a) or (6)(b).

(d) An individual is given the option to select another employer representative if the Department or Brokerage suspends, terminates, or denies an individual's request for an employer representative for the reasons described in subsection (6)(c) of this section.

(7) APPEALS.

(a) The Department or the Brokerage, respectively, shall mail a notice identifying the individual and if applicable the individual's employer representative and legal or designated representative, when:

(A) The Department or the Brokerage denies, suspends, or terminates an employer from performing the employer responsibilities described in sections (4)(a) or (6)(b) of this rule; and

(B) The Department or the Brokerage denies, suspends, or terminates an employer representative from performing the employer responsibilities described in section (4)(a) or (6)(b) of this rule because the employer representative does not meet the qualifications in section (6)(c) of this rule.

(b) BROKERAGE ISSUED NOTICES. An individual receiving support from an independent provider, or as applicable the individual's legal or designated representative or employer representative, may appeal a notice issued by the Brokerage by requesting a review by the Brokerage's director.

(A) For an appeal regarding denial, suspension, or termination of an employer to be valid, written notice of the appeal and request for review must be received by the Brokerage within 45 calendar days of the date of the notice.

(B) The Brokerage director shall complete a review and issue a decision within 30 calendar days of the date the written appeal was received by the Brokerage.

(C) If an individual, or as applicable the individual's legal or designated representative or employer representative, is dissatisfied with the Brokerage director's decision, the individual, or as applicable the individual's legal or designated representative or employer representative, may request an administrator review by the Department's director or the Department's designee.

(D) For an appeal of the Brokerage's decision to be valid, written notice of the appeal and request for an administrator review must be received by the Department within 15 calendar days of the date of the Brokerage's decision.

(E) The Department's director or the Department's designee shall complete an administrator review within 30 calendar days of the date the written appeal was received by the Department.

(F) The Department's decision of an administrator review is considered final.

(c) DEPARTMENT ISSUED NOTICES. An individual receiving support from an independent provider, or as applicable the individual's legal or designated representative, may appeal a notice issued by the Department by requesting an administrator review by the Department's director or the Department's designee.

(A) For an appeal regarding denial, suspension, or termination of an employer to be valid, written notice of the appeal and request for an administrator review must be received by the Department within 45 calendar days of the date of the notice.

(B) The Department's director or Department's designee shall complete an administrator review and issue a decision within 30 calendar days of the date the written appeal was received by the Department.

(C) The Department's decision of an administrator review is considered final.

(d) An individual has appeal rights as described in OAR 411-340-0060 when the denial, suspension, or termination of the employer results in the Department or CDDP denying, suspending, or terminating an individual from support services.

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.: APD 26-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14

## 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.

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(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; or

(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; or

(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, sex, 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) A written job description for all services to be delivered by an employee of the individual or the individual's legal or designated representative (as applicable). The written job description 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, duration 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 an employee of the individual.

(l) Personal agent correspondence and notes related to resource development and plan outcomes;

(m) 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.

(n) 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 accessibility adaptations.

(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

# ADMINISTRATIVE RULES

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 accessibility adaptations 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;

(II) Are completed or supervised by a contractor licensed and bonded in Oregon; and

(III) That steps are taken as prescribed by the Department for protection of the Department's interest through liens or other legally available means.

(iv) The brokerage must obtain written authorization from the owner of a rental structure before any environmental accessibility adaptations are made to the rental structure.

(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 their 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 REFERRAL TO AFFILIATED ENTITIES.

(a) 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 unless:

(A) The brokerage conducts a review of provider options that demonstrates that the entity's services are cost-effective and best-suited to provide the services determined by the individual to be the most effective and desirable for meeting needs and circumstances represented in the individual's ISP; and

(B) The entity is freely selected by the individual and is the clear choice by the individual among all available alternatives.

(b) The brokerage must develop and implement a policy that addresses individual selection of an entity that the brokerage is a part of, or otherwise directly affiliated, to provide services purchased with private or support services funds. This policy must address, at minimum:

(A) Disclosure of the relationship between the brokerage and the potential provider;

(B) Provision of information about all other potential providers to the individual, or as applicable the individual's legal or designated representative, without bias;

(C) A process for arriving at the option for selecting a provider;

(D) Verification of the fact that the providers were freely chosen among all alternatives;

(E) Collection and review of data on services purchased by an individual enrolled in the brokerage by an entity that the brokerage is a part of or otherwise directly affiliated; and

(F) Training of personal agents and individuals in issues related to the selection of providers.

(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

## 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 paid as a contractor or a self-employed person, who is not a personal support worker, 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 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's 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 personal support worker enrollment.

(B) Background check approval is effective for two years from the date a personal support worker is hired or contracted with to provide in-home services, except in the following circumstances:

(i) Based on possible criminal activity or other allegations against the personal support worker, 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 personal support worker.

(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 in an individual's 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 receiving services.

(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 Office of Inspector General's list of excluded or debarred providers (<http://exclusions.oig.hhs.gov/>); and

(j) If providing transportation, have a valid driver's license 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.

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(k) Sign a Medicaid provider agreement and be enrolled as a Medicaid provider prior to delivery of any services.

(3) Section (1)(c) of this rule does not apply to employees of individuals, 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 Department's designee within 24 hours.

(5) **BEHAVIOR CONSULTANTS.** Behavior consultants are not Personal Support Workers. Behavior consultants providing specialized supports must:

(a) Have education, skills, and abilities necessary to provide behavior consultation services, including knowledge and experience in developing Behavior Support Plans based on positive behavioral theory and practice;

(b) Have received at least two days of training in the Oregon Intervention Services Behavior Intervention System, and have a current certificate; and

(c) Submit a resume 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.

(6) **NURSE.** A nurse providing community nursing services is not a personal support worker. The nurse must:

(a) Have a current Oregon nursing license;

(b) Be enrolled in the Long Term Care Community Nursing Program as described in OAR chapter 411, division 048; and

(c) Submit a resume to the brokerage indicating the education, skills, and abilities necessary to provide nursing services in accordance with state law, including at least one year of experience with individuals.

(7) **DIETICIANS.** Dietitians 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

## 411-340-0170

### Standards for Provider Organizations Paid with Support Services Funds

(1) **PROVIDER ORGANIZATIONS WITH CURRENT LICENSE OR CERTIFICATION.** A provider organization certified, licensed, and endorsed under OAR chapter 411, division 325 for 24-hour residential services, or licensed under OAR chapter 411, division 360 for adult foster homes, or certified and endorsed under OAR chapter 411, division 345 for employment and alternatives to employment services or 411-328-0550 to 411-328-0830 for supported living services, may not require additional certification as an organization to provide relief care, attendant care, skill 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 that 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 ORGANIZATIONS REQUIRING CERTIFICATION.** A provider organization without a current license or certification as described in section (1) of this rule must be certified as a provider organization according to OAR 411-340-0030 prior to selection for providing the services listed in OAR 411-340-0130 and paid for with support services funds.

(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, 411-340-0050, 411-340-0070, 411-340-0080, and 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 the individual's services;

(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 staff member's or provider organization's name to the individual's bank account or other personal property without approval of the individual or the individual's legal representative (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 enrollment, 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 individual's name, current home address, and home phone number;

(B) A current written service agreement, signed and dated by the individual or the individual's legal or designated representative (as applicable);

(C) Contact information for the individual's legal or designated representative (as applicable) and any other people designated by the individual, or as applicable the individual's legal or designated representative, 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.

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(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 fire extinguisher and first aid kit in each vehicle; and

(E) Assign drivers who meet applicable Department of Motor Vehicles requirements to operate vehicles that transport individuals.

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(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 working 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) Be only used until the individual is no longer a threat to self or others;

(ii) Be authorized by the provider organization director or the individual's physician 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.

(1) 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 agency. The type of condition attached to a certificate shall directly relate to a risk of harm or potential risk of harm to individuals. 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.

(b) Conditions that the Department may impose on a certificate include but are not limited to:

(A) Restricting the total number of individuals that may be served;

(B) Restricting the number of individuals allowed within program services based upon the capacity of the agency and staff to meet the health and safety needs of all individuals;

(C) Restricting the support level of individuals allowed within program services based upon the 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 persons on the premises who may be a threat to an individual's health, safety, or welfare;

(G) Requiring additional documentation; or

(H) Restricting admissions.

(c) NOTICE OF CERTIFICATE CONDITIONS. The Department shall notify the agency in writing of any conditions imposed, the reason for the conditions, and the opportunity to request a hearing under ORS chapter 183. Conditions take effect immediately upon issuance of the notice, or at such later date as indicated on the notice, and shall continue until removed by the Department.

(d) HEARING. The agency may request a contested case hearing in accordance with ORS chapter 183 and this rule upon written notice from the Department of the imposition of conditions.

(A) The agency must request a hearing within 21 days of receipt of the Department's written notice of certificate conditions.

(B) In addition to, or in-lieu of a hearing, an agency may request an administrator review as described in section (7) of this rule. The administrator review does not diminish an agency's right to a hearing.

(e) 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.

(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 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 services rules such that the health, safety, or welfare of individuals is jeopardized and the agency fails to correct the non-compliance within 30 calendar days of receipt of written notice of non-compliance;

(B) Has demonstrated a substantial failure to comply with these rules or the corresponding program services 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 service;

(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 individual services, program services 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 current Centers for Medicare and Medicaid Services list of excluded or debarred providers.

(b) NOTICE OF CERTIFICATE DENIAL, REVOCATION, OR REFUSAL TO RENEW. The Department may issue a notice of denial, refusal to renew, or revocation of the certificate following a Department finding that there is a substantial failure to comply with these rules or such

# ADMINISTRATIVE RULES

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 contested case hearing in accordance with ORS chapter 183, this rule, and 443.440 for 24-hour residential services, upon written notice from the Department of denial, refusal to renew, or revocation of the certificate.

(A) DENIAL. The applicant must request a hearing within 60 days of receipt of the Department's written notice of denial.

(B) REFUSAL TO RENEW. The agency must request a hearing within 60 days of receipt of the Department's written notice of refusal to renew.

(C) REVOCATION. The agency must request a hearing within 21 days of receipt of the Department's written notice of revocation. In addition to, or in-lieu of a hearing, the agency may request an administrator review as described in section (7) of this rule. The administrator review does not diminish the agency's right 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 agency, immediately suspend a certificate without a pre-suspension hearing and the agency may not continue operation.

(b) HEARING. The agency may request a contested case hearing in accordance with ORS Chapter 183 and this rule upon written notice from the Department of the immediate suspension of the certificate.

(A) The agency must request a hearing within 21 days of receipt of the Department's written notice of suspension.

(B) In addition to, or in-lieu of a hearing, the agency may request an administrator review as described in section (7) of this rule. The administrator review does not diminish the agency's right to a hearing.

## (7) ADMINISTRATOR REVIEW.

(a) The agency, in addition to the right to a contested case hearing, may request an administrator review by the Department's Director or designee.

(b) The request for administrator review must be received by the Department within 10 days from the date of the Department's notice of suspension, revocation, or imposition of conditions. The agency may submit, along with the request for administrator review, any additional written materials the agency wishes to have considered during the administrator review.

(c) The Department shall conduct the administrator review and issue a decision within 10 days from the date of receipt of the request for administrator review, or by a later date as agreed to by the agency.

(d) If the decision of the Department is to affirm the suspension, revocation, or condition, the agency may appeal the decision to a contested case hearing as long as the request for a contested case hearing was received by the Department within 21 days of the original written notice of suspension, revocation, or imposition of conditions.

(8) INFORMAL CONFERENCE. After the Department has received a request for hearing, the Department shall offer the applicant or the agency an opportunity for an informal conference unless an administrator review has been completed as described in section (7) of this rule.

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

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**Rule Caption:** Employment and Day Support Activities for Adults with Intellectual or Developmental Disabilities

**Adm. Order No.:** APD 27-2014(Temp)

**Filed with Sec. of State:** 7-1-2014

**Certified to be Effective:** 7-1-14 thru 12-28-14

**Notice Publication Date:**

**Rules Adopted:** 411-345-0027, 411-345-0085

**Rules Amended:** 411-345-0010, 411-345-0020, 411-345-0025, 411-345-0030, 411-345-0050, 411-345-0090, 411-345-0095, 411-345-0110, 411-345-0130, 411-345-0140, 411-345-0160, 411-345-0170, 411-345-0180, 411-345-0190, 411-345-0200, 411-345-0230, 411-345-0240, 411-345-0250, 411-345-0260, 411-345-0270

**Rules Suspended:** 411-345-0100

**Subject:** The Department of Human Services (Department) is immediately updating the rules in OAR chapter 411, division 345 for employment and day support activities for adults with intellectual or developmental disabilities to reflect the following:

- Alignment with Oregon Administrative Rules 407-025-0000 through 407-025-0120, Executive Order No.13-04, and Oregon's "Employment First" policy;

- Alignment with the 1915(c) Home and Community Based Services waivers and the services available under the waivers;

- Alignment with the Executive Order by outlining the requirements for the Career Development Plan completed as a part of the annual ISP;

- Recognizing changes to provider types who may deliver the employment and day support activities;

- Changes in the funding authority for non-employment services from the 1915(c) Home and Community Based Services waiver to the 1915(k) Community First Choice state plan amendment; and

- Alignment of provider qualifications and requirements with Oregon Administrative Rules 407-025-0000 through 407-025-0120 and Executive Order No. 13-04.

The rules have been amended in the following ways:

- Change title of Alternatives to Employment to Day Support Activities;

- OAR 411-345-0020 is being amended to incorporate the general definitions in OAR 411-317-0000 and to update the definitions relating to employment and day support services, provider types, and service descriptions;

- OAR 411-345-0027 describes who is eligible to receive services as described in these rules. Assures employment services are only available to individuals who are eligible for OSIPM;

- OAR 411-345-0030 describes updates to provider requirements consistent with the 1915(c) Home and Community Based Services waiver. It updates qualifications by service type and incorporates new provider types;

- OAR 411-345-0050 and 411-345-0090 are updated due to the inclusion of independent provider types and to clarify these rules do not apply to them;

- OAR 411-345-0080 is added to assure adequate documentation of services is kept by service providers;

- OAR 411-345-0095 incorporates limits to employment services as described in the 1915(c) Home and Community Based Services waivers;

- OAR 411-345-0100 is being suspended due to substantially similar requirements being added to OAR 411-345-0030;

- OAR 411-345-0110 and 411-345-0130 are being amended to account for the adoption of rules in OAR chapter 411, division 318 and to recognize the authority of that rule in matters of complaints, individual rights, Notification of Planned Action, and hearings;

- OAR 411-345-0140 is updated:

Due to the inclusion of independent provider types;

To clarify that these rules do not apply to them and due to eligibility language being moved to OAR 411-345-0027; and

To account for the adoption of rules in OAR chapter 411, division 318 and to recognize the authority of that rule in matters of appeals.

- OAR 411-345-0160 is amended to require and describe a Career Development Plan; and

- OAR 411-345-0170, 411-345-0180, 411-345-0190, 411-345-0200, 411-345-0230, 411-345-0240, 411-345-0250, 411-345-0260, and 411-345-0270 are being amended due to the presence of an allowable agency provider type that may provide employment and day support activities that is not certified under these rules. The changes clarify that these rules only apply to agencies certified under them.

**Rules Coordinator:** Kimberly Colkitt-Hallman — (503) 945-6398

## 411-345-0010

### Statement of Purpose

(1) These rules, OAR 411-345-0010 through 411-315-0270, effectuate Oregon's Employment First policy under which the employment of

# ADMINISTRATIVE RULES

individuals with developmental disabilities in fully integrated work settings is the highest priority over unemployment, segregated employment, day support activities, or other non-work day activities.

(2) For those who successfully achieve the goal of integrated employment, future service planning focuses on maintaining employment or considering additional career or advancement opportunities.

(3) Employment Services are specifically addressed in the Individual Support Plan (ISP) and are considered and provided 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 providing employment services and day support activities, and the qualifications and requirements for eligibility for those services, for adults with intellectual or developmental disabilities. These rules also prescribe the standards and procedures by which the Department endorses agency service providers to provide employment services and day support activities.

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 309-047-0000, 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

## 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) "Abuse" means "abuse of an adult" as defined in OAR 407-045-0260.

(2) "ADL" means "activities of daily living". ADL are basic personal everyday activities, such as eating, using the restroom, grooming, dressing, bathing, and transferring.

(3) "Adult" means an individual who is 18 years or older with an intellectual or developmental disability.

(4) "Agency Service Provider" means a public or private community agency or organization that provides recognized developmental disability services and is certified by the Department to provide services under these rules and is endorsed under these rules or the rules in OAR chapter 411, division 323.

(5) "Attendant Care" means assistance with ADL, IADL, and health-related tasks through cueing, monitoring, reassurance, redirection, set-up, hands-on, standby assistance, and reminding as described in OAR 411-345-0025.

(6) "Brokerage" means "brokerage" as defined in OAR 411-340-0020.

(7) "Career Development Plan" means the part of an ISP that identifies the employment goals and objectives for an individual, the services and supports needed to achieve those goals, the people, agencies, and providers assigned to assist the individual to attain those goals, the obstacles to the individual working in an individualized job in an integrated employment setting, and the services and supports necessary to overcome those obstacles.

(8) "CDDP" means "community developmental disability program" as defined in OAR 411-320-0020.

(9) "Certificate" means the document issued by the Department to an agency service provider that certifies the service provider is eligible under these rules or the rules in OAR chapter 411, division 323 to receive state funds for the provision of endorsed employment services and day support activities.

(10) "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, service providers, services, and service settings. Personal outcomes, goals, and activities are supported in the context of balancing the rights, risks, and personal choices of the individual. Individuals are supported in opportunities to make changes when so expressed. Choice may be communicated orally, through sign language, or by other communication methods.

(11) "Collective Bargaining Agreement" means the Collective Bargaining Agreement between the Home Care Commission and the Service Employee's International Union, Local 503, Oregon Public Employees' Union regarding wages, hours, rules, and working conditions.

(12) "Day Supports Activities":

(a) Means an organized set of attendant care, ADL, or IADL skills training activities provided by a provider organization that support an individual to socialize and engage in community integration:

(A) Support with socialization includes assisting an individual in acquiring, retaining, and improving self-awareness and self-control, social responsiveness, social amenities, and interpersonal skills.

(B) Support for community integration includes those supports necessary to allow an individual to engage in recreation or leisure activities. The support includes assisting individuals in acquiring, retaining, and improving skills to use available community resources, facilities, or businesses. Support for community integration does not include the cost of recreation or leisure activities.

(b) Day support activities are available through the Community First Choice state plan amendment.

(13) "Department" means the Department of Human Services.

(14) "Designated Representative" means any adult, such as a parent, family member, guardian, advocate, or other person authorized in writing by an individual to serve as the representative of the individual in connection with the provision of funded supports, who is not also a paid provider for the individual. An individual is not required to appoint a designated representative.

(15) "Developmental Disability" means "developmental disability" as defined in OAR 411-320-0020 and described in 411-320-0080.

(16) "Director" means the Director of the Department of Human Services, Office of Developmental Disability Services, or the designee of the Director.

(17) "Discovery and Career Exploration" is a person-centered, comprehensive, employment planning and support service that provides assistance for individuals to obtain, maintain, or advance in a competitive, customized, or self-employment setting.

(18) "Discovery Profile" means a report, meeting requirements established by the Department, produced as an outcome of discovery and career exploration, 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 settings for the success of the individual.

(19) "Employment Path Services" mean 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 paid employment in integrated community settings.

(20) "Employment Services" mean any services that has the employment of individuals as the primary goal, including individual supported employment (job development or job coaching), small group supported employment, discovery and career exploration, and employment path services. Employment services do not include vocational assessments in sheltered workshops. Employment services are home and community-based waiver services.

(21) "Employment Specialist" means an employee of an independent provider or an employee of an agency service provider who has specific qualifications and training to provide employment services under these rules, including supported employment - individual employment support (job coaching and job development), supported employment - small group supported employment, employment path, or discovery and career exploration.

(22) "Endorsement" means the authorization to provide employment services and day support activities issued by the Department to a certified service provider agency that has met the qualification criteria outlined in these rules and the rules in OAR chapter 411, division 323.

(23) "Entry" means admission to a Department-funded developmental disability service offered by an agency provider.

(24) "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.

(25) "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 and day support activities.

(26) "Exit" means termination or discontinuance of a Department-funded developmental disability service offered by an agency provider.

(27) "Functional Needs Assessment":

(a) Means the comprehensive assessment or re-assessment that:

(A) Documents physical, mental, and social functioning; and

(B) Identifies risk factors, choices and preferences, service and support needs, strengths, and goals.

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(b) The functional needs assessment may be the Adult Needs Assessment (ANA), Support Needs Assessment Profile (SNAP), or Supports Intensity Scale (SIS).

(A) The Department incorporates Version B of the ANA dated July 1, 2014 into these rules by this reference. The ANA is maintained by the Department at: [www.dhs.state.or.us/spd/tools/dd/cm/ANA\\_Adult\\_In-home.xls](http://www.dhs.state.or.us/spd/tools/dd/cm/ANA_Adult_In-home.xls).

(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) Printed copies may be obtained by calling (503) 945-6398 or writing the Department of Human Services, Developmental Disabilities, ATTN: Rule Coordinator, 500 Summer Street NE, Salem, OR 97301.

(28) "IADL" means "instrumental activities of daily living". IADL include activities other than ADL required to continue independent living such as:

- (a) Meal planning and preparation;
- (b) Budgeting;
- (c) Shopping for food, clothing, and other essential items;
- (d) Performing essential household chores;
- (e) Communicating by phone or other media; and
- (f) Participating in the community.

(29) "Important for an Individual" means the areas of the life of an individual that relate to being healthy, safe, and a valued member of the community.

(30) "Important to an Individual" means the perspective of an individual on the people, places, and things the individual likes, personal values, spirituality, and a sense of self. This is learned by listening to what is being said by words or actions. When there is a conflict between words and actions, actions are considered first.

(31) "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.

(32) "Independence" means the extent to which an individual exerts control and choice over his or her own life.

(33) "Independent Provider" means a person selected by an individual, or as applicable the legal or designated representative of the individual, acting in the role of an independent contractor or self-employed person authorized to provide services for the individual based upon the ISP for the individual. Services provided by an independent provider do not require Department certification and endorsement.

(34) "Individual" means an adult with an intellectual or developmental disability applying for, or determined eligible for, developmental disability services.

(35) "Integrated Employment Setting" means an employment setting that allows an individual to interact with non-disabled people in a typical community work environment, including self-employment or business models. An integrated employment setting may include a group enclave or a mobile crew that allows an individual to interact with non-disabled people in the employment setting. An integrated employment setting does not mean facility-based work in a sheltered workshop or non-work activities.

(36) "Integration" as defined in ORS 427.005 means:

(a) The use by individuals with an 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 an intellectual or developmental disability participate, together with regular contact with people without an intellectual or developmental disability; and

(c) Individuals with intellectual or developmental disabilities reside in homes or home-like settings that are in proximity to community resources and foster contact with people in the community.

(37) "Intellectual Disability" means "intellectual disability" as defined in OAR 411-320-0020 and described in 411-320-0080.

(38) "Involuntary Transfer" means an agency service provider has made the decision to transfer an individual to be served at another site and the individual, or as applicable the legal or designated representative of the individual, has not given prior approval.

(39) "ISP" means "Individual Support Plan". An ISP includes the written details of the supports, activities, and resources required for an individual 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 the services and supports that are important for the individual to meet the needs of the individual identified through a functional needs assessment as well as the preferences of the individual for service 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, state plan, or natural supports.

(40) "ISP Action Plan" means the written documentation of the commitment of an ISP team in supporting an individual to resolve or improve particular aspects of the life of the individual. An ISP Action Plan identifies the necessary measurable steps to be taken, who is accountable for assuring implementation, and timelines for completion.

(41) "ISP Meeting" means an annual meeting facilitated by a services coordinator or personal agent and attended by the ISP team. The purpose of the ISP meeting is to determine the needs of an individual, coordinate services and training, and develop the ISP for the individual.

(42) "ISP Team" means a team composed of an individual receiving services, the legal or designated representative of an individual (as applicable), services coordinator or personal agent, and others chosen by the individual or the legal or designated representative of the individual, such as service providers and family members.

(43) "Job Coaching" means initial and on-going identification and delivery of services and support for individuals working in an individualized job in an integrated setting and earning or working toward earning minimum wage. Job coaching may also include identification and delivery of services and supports that assist the individual in maintaining self-employment.

(44) "Job Development" means support for an individual to obtain job placement in an integrated setting in the general workforce or support for an individual to identify potential self-employment business opportunities.

(45) "Legal Representative" means an attorney at law who has been retained by or for an individual, a power of attorney for an individual, or a person or agency authorized by a court to make decisions about services for an individual.

(46) "Mandatory Reporter" means any public or private official as defined in OAR 407-045-0260 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. Nothing contained in ORS 40.225 to 40.295 affects the duty to report imposed by this definition, except that a psychiatrist, psychologist, clergy, or attorney is not required to report if the communication is privileged under 40.225 to 40.295.

(47) "Medicaid Agency Identification Number" means the numeric identifier assigned by the Department to a service provider following the enrollment of the service provider as described in OAR chapter 411, division 370.

(48) "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 OAR chapter 411, division 370. The Medicaid Performing Provider Number is used by the rendering service provider for identification and billing purposes associated with service authorizations and payments.

(49) "OHP Plus" means only the Medicaid benefit packages provided under OAR 410-120-1210(4)(a) and (b).

(50) "OIS" means "Oregon Intervention System". OIS is the system of providing training to people who work with designated individuals to provide elements of positive behavior support and non-aversive behavior intervention. OIS uses principles of pro-active support and describes approved protective physical intervention techniques that are used to maintain health and safety.

(51) "OSIP-M" means "Oregon Supplemental Income Program-Medical" as described in OAR 461-001-0030. OSIP-M is Oregon Medicaid insurance coverage for individuals who meet the eligibility criteria described in OAR chapter 461.

(52) "Person-Centered Planning":

(a) Means a timely and formal or informal process that is driven by an individual, includes people chosen by the individual, ensures that the individual directs the process to the maximum extent possible, and that the individual is enabled to make informed choices and decisions consistent with CFR 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, service providers, and lifestyle preferences;

# ADMINISTRATIVE RULES

(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.

(53) "Personal Agent" means "personal agent" as defined in OAR 411-340-0020.

(54) "Personal Support Worker" means "personal support worker" as defined in OAR 411-375-0010.

(55) "PRN" means the administration of medication to an individual on an 'as needed' basis (pro re nata).

(56) "Productivity" as defined in ORS 427.005 means:

(a) Regular engagement in income producing work, preferably competitive employment with supports and accommodations to the extent necessary, by an individual with an intellectual or developmental disability, which is measured through improvements in income level, employment status, or job advancement; or

(b) Engagement by an individual with an intellectual or developmental disability in work contributing to a household or community.

(57) "Protection" means the necessary actions taken as soon as possible to prevent subsequent abuse or exploitation of an individual, to prevent self-destructive acts, or to safeguard the person, property, and funds of an individual.

(58) "Protective Physical Intervention" means any manual physical holding of, or contact with, an individual that restricts freedom of movement.

(59) "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.

(60) "Self-Determination" means a philosophy and process by which an individual is empowered to gain control over the selection of services that meets the needs of the individual. The basic principles of self-determination are:

(a) Freedom. The ability for an individual, together with freely chosen family, friends, and professionals, to plan for employment beyond the parameters of a predefined program;

(b) Authority. The ability for an individual, together with the ISP team, to declare a chosen employment path and to plan supports accordingly;

(c) Autonomy. Planning for and accessing resources that support an individual to seek employment; and

(d) Responsibility. The acceptance of a valued role of an individual in the community through 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.

(61) "Service Provider" means:

(a) An agency service provider as defined by these rules;

(b) An independent provider, as defined by these rules, 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.

(62) "Services Coordinator" means "services coordinator" as defined in OAR 411-320-0020.

(63) "Sheltered Workshop" means a facility-based service that congregates more than eight adults with intellectual or developmental disabilities. Sheltered workshops are operated by service provider entities. In general, a sheltered workshop employs only individuals with intellectual or developmental disabilities except for service support staff.

(64) "Situational Assessment" means an assessment that maintains the qualities of a vocational assessment but is administered on-site in an integrated employment setting, where an individual is evaluated in the performance of work activities typical to the setting where the assessment is administered.

(65) "Skills Training" means the activities described in OAR 411-345-0025 that are intended to maximize the independence of an individual through training, coaching, and prompting the individual to accomplish ADL and IADL.

(66) "Staff" means paid employees of agencies responsible for providing supports or services to individuals for which payment is made through the Department.

(67) "Support" means the assistance that an individual requires, solely because of the affects of an intellectual or developmental disability, to maintain or increase independence, achieve community presence and participation, and improve productivity. Support is subject to change with time and circumstances.

(68) "Support Services" means "support services" as defined in OAR 411-340-0020.

(69) "Supported Employment - Individual Employment Support" means services for individuals who need on-going support to obtain and maintain a job in an integrated competitive, customized, or self-employment (including home-based) setting in the general workforce.

(70) "Supported Employment - 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. Examples include mobile crews and other business-based workgroups. Supported employment - 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.

(71) "These Rules" mean the rules in OAR chapter 411, division 345.

(72) "Transfer" means movement of an individual from one site to another site administered or operated by the same service provider.

(73) "Transition Plan" means the written plan of services and supports for the period of time between the entry of an individual into a particular service and the development of the ISP for the individual. The Transition Plan is approved by the 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 ISP development.

(74) "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, a fire requiring the services of a fire department, or any incident requiring an abuse investigation.

(75) "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 service provider.

(76) "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 including, but not limited to, the ISP and Career Development Plan.

Stat. Auth.: ORS 409.050 & 430.662

Stats. Implemented: ORS 430.610, 430.662, 430.670

Hist.: MHD 26-1982(Temp), f. & cf. 12-3-82; MHD 9-1983, f. & cf. 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

## 411-345-0025

### Services Provided

(1) Employment is the preferred activity for individuals receiving services under these rules. Employment in fully integrated work settings is the highest priority over unemployment, segregated or sheltered employment, or other non-work day activities.

(2) 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 at least minimum wage.

(3) 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) Employment services have an optimal and expected outcome of sustained paid employment and work experience leading to further career development and individual integrated employment for which an individual is compensated at or above the state's 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) Employment services are provided under these rules in accordance with the State of Oregon Executive Order No. 13-04 and Oregon Administrative Rules 407-025-0000 to 407-025-0120.

(6) Employment services must be evidence-based where evidence-based practices have been identified.

(7) Employment services must be:

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(a) Offered to eligible adult individuals in accordance with OAR 411-345-0140;

(b) Provided to eligible adult individuals under the authorization of an ISP in accordance with OAR 411-345-0160;

(c) Offered in accordance with OAR 411-345-0140, when services are provided by an agency service provider;

(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 individual's needs, consistent with the choice of the individuals regarding services, providers, and goals; and

(f) Designed to:

(A) Increase an individual's independence, integration, and productivity;

(B) Promote an individual's integration into the workforce and workplace;

(C) Promote interaction with people without disabilities; and

(D) Support successful employment outcomes consistent with the individual's personal and career goals.

(8) Employment services do not include:

(a) Services available to an individual under the Rehabilitation Act of 1973;

(b) Services available to an individual under P.L. 94-142 (Individuals with Disabilities Education Act); or

(c) Vocational assessments in a sheltered workshop.

(9) Employment service providers operating under these rules must provide one or more of the following employment services:

(a) Supported Employment — Individual Employment Support includes:

(A) Job coaching:

(i) To assist an individual to maintain individualized employment in an integrated competitive or customized setting in the general workforce and optimally earning, or working toward earning, minimum wage; or

(ii) To assist an individual to maintain self-employment. This service cannot be provided to defray the operational expenses of the business; or

(B) Job development:

(i) To assist an individual to obtain individualized job placement in an integrated competitive or customized setting in the general workforce, and optimally earning or working toward earning, minimum wage; or

(ii) To assist an individual to identify and pursue self-employment business opportunities, including:

(I) Assist an individual to access business financial resources for self-employment; or

(II) Assist an individual to develop and launch a business.

(b) Supported Employment — Small Group Employment Support:

(A) To provide services and training activities in regular business, industry and community settings;

(B) For groups of two to eight individuals working as a mobile crew, enclave, or other business-based workgroup; and

(C) Must be provided in a manner that promotes integration into the work place and interaction with people without disabilities in those work places.

(c) Discovery — Career Exploration:

(A) To provide a person-centered, comprehensive employment planning and support service that provides assistance for individuals to obtain, maintain, or advance in a competitive, customized, or self-employment setting;

(B) Includes activities to discover interests, strengths, abilities, transferable skills, and conditions for success, both generally and related to employment. May also 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) Must be completed within a three month period. A three month extension may be authorized if there is a legitimate cause;

(D) Must have an outcome of a discovery profile. The discovery profile must meet requirements established by the Department; and

(E) May include a referral to vocational rehabilitation services.

(d) Employment Path Services:

(A) To provide learning and work experiences, including volunteer work, where an individual can develop general, non-job-task-specific strengths and skills that contribute to employability in integrated community settings;

(B) 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; and

(C) Requires 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.

(10) Day support activities must be:

(a) Provided to eligible adult individuals under the authorization of an ISP;

(b) Offered in accordance with OAR 411-345-0140, when services are provided by an agency service provider;

(c) Designed to:

(A) Increase an individual's independence, integration, and productivity;

(B) Support successful outcomes consistent with the individual's personal goals and personal choices;

(C) Foster the acquisition of skills, building positive social behavior and interpersonal competence;

(D) Be consistent with the individual's person-centered plan;

(E) Coordinate with any needed therapies in the individual's person-centered services and supports plan.

(11) Day support activities do not include:

(a) Services available to an individual under the Rehabilitation Act of 1973; or

(b) Services available to an individual under P.L. 94-142 (Individuals with Disabilities Education Act).

(12) Day support activities providers operating under these rules must provide one or more of the following day program services:

(a) Attendant care services that facilitate socialization and community integration. Attendant care includes:

(A) ADL services include but are not limited to:

(i) 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;

(ii) 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;

(iii) 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;

(v) Medication and medical equipment — monitoring an individual for choking while taking medications and assisting with the administration of medications; and

(vi) Delegated nursing tasks.

(B) IADL services include but are not limited to:

(i) First aid and handling emergencies, including addressing medical incidents related to conditions such as seizures, aspiration, constipation, or dehydration or responding to an individual's call for help during an emergent situation or for unscheduled needs requiring immediate response;

(ii) Cognitive assistance or emotional support provided to an individual due to an intellectual or developmental disability, including helping the individual cope with change and assisting the individual with decision-making, reassurance, orientation, memory, or other cognitive functions; and

(iii) Support in the community around socialization, recreation and leisure, communication, and participation in the community.

(I) Support with socialization includes assisting participants in acquiring, retaining, and improving self-awareness and self-control, social responsiveness, social amenities, and interpersonal skills.

(II) Support with community participation, recreation, or leisure includes assisting individuals in acquiring, retaining, and improving skills to use available community resources, facilities, or businesses.

(iv) Support with communication provided to assist includes assisting individuals in acquiring, retaining, and improving expressive and receptive skills in verbal and non-verbal language and the functional application of acquired reading and writing skills.

(b) Skills training specifically tied to the functional needs assessment and ISP as a means for an individual to acquire, maintain, or enhance independence in supports related to socialization or community integration that would otherwise be provided through state plan.

(A) Skills training may be applied to the use and care of assistive devices and technologies. Skills training is authorized when:

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(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 personal agent no less frequently than every six months, based on the start date of the initiation of the skills training.

(B) When anticipated outcomes are not achieved, the services coordinator or personal agent must reassess the use of skills training with the individual.

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

## 411-345-0027

### Qualification for Services

(1) To receive employment services or day support activities an individual must meet criteria identified below.

(a) Be an Oregon resident;

(b) Be 18 years of age or older;

(c) Be determined eligible for developmental disability services by the CDDP of the individual's county of residence as described in OAR 411-320-0080;

(d) Meet the Level of Care as defined in OAR 411-320-0020; and

(e) Have services under these rules authorized in an ISP by the CDDP or Brokerage providing case management services.

(2) To be eligible for employment services, an individual must:

(a) Meet the criteria in section (1) of this rule;

(b) Be eligible for OSIP-M benefits; and

(c) Have an employment related goal in their ISP.

(3) To be eligible for day support activities, an individual must meet the criteria in section (1) of this rule and must:

(a) Be eligible for OHP Plus;

(b) Effective October 1, 2014, an individual receiving medical benefits under OAR 410-200 requesting Medicaid coverage for services in a nonstandard living arrangement (see OAR 461-001-0000) is subject to the rules regarding transfer of assets (see OAR 461-140-0210 to 461-140-0300) in the same manner as if they were requesting these services under OSIP-M.

(A) This includes, but is not limited to, the following assets:

(i) An annuity is evaluated according to OAR 461-145-0022;

(ii) A transfer of property when an individual retains a life estate is evaluated according to OAR 461-145-0310;

(iii) A loan made by an individual is evaluated according to OAR 461-145-0330;

(iv) An Irrevocable trust is evaluated according to OAR 461-145-0540;

(B) When an individual will be disqualified for a transfer of assets they must receive a notice meeting the requirements of OAR 461-175-0310 in the same manner as if they were requesting services under OSIP-M.

(C) An individual found to have transferred assets is not eligible for Community First Choice Services.

(c) Have an assessed need for attendant care services based upon a Functional Needs Assessment; and

(d) Have day support activities identified as a service in their ISP.

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

## 411-345-0030

### Service Provider Requirements

(1) PROVIDER REQUIREMENTS. Employment services must be provided by an Employment Specialist.

(a) EMPLOYMENT SPECIALIST REQUIREMENTS. All Employment Specialists are required to:

(A) Provide services designed to support successful employment outcomes consistent with the individual's personal and career goals, including goals identified in an individual's ISP and Career Development Plan;

(B) Ensure all individuals' records are confidential as described in OAR 411-323-0060; and

(C) Perform the duties as a mandatory reporter when appropriate and as required by law.

(b) INDEPENDENT PROVIDER REQUIREMENTS. An independent provider, who is not a personal support worker, and who is an

Employment Specialist and selected to provide at least one of the services and supports in OAR 411-345-0020 is required to:

(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. 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 Department's Background Check Request form must be completed by the subject individual to show intent to work statewide;

(C) Effective July 28, 2009, not have been convicted of any of the disqualifying crimes listed in OAR 407-007-0275. This does not apply to employees of individuals, 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.

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

(E) Not be the spouse of an individual receiving services;

(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 Office of Inspector General's list of excluded or debarred providers (<http://exclusions.oig.hhs.gov/>);

(I) If providing transportation, have a valid driver's license 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) Sign a Medicaid provider agreement and be enrolled as a Medicaid provider prior to delivery of any services.

(c) AGENCY SERVICE PROVIDER REQUIREMENTS. Agencies providing Employment Services or Day Support Activities must have a certificate as set forth in OAR 411-340 or must comply with the following:

(A) CERTIFICATION, ENDORSEMENT, AND ENROLLMENT. To provide Employment Services or Day Support Activities, an agency service provider:

(i) Must have a certificate and an endorsement to provide employment and day support activities as set forth in OAR chapter 411, division 323;

(ii) A Medicaid Agency Identification Number assigned by the Department as described in OAR chapter 411, division 370; and

(iii) For each specific geographic service area where Employment Services and Day Support Activities shall be delivered, a Medicaid Performing Provider Number assigned by the Department as described in OAR chapter 411, division 370.

(B) INSPECTIONS AND INVESTIGATIONS. The service provider must allow inspections and investigations as described in OAR 411-323-0040.

(C) AGENCY MANAGEMENT AND PERSONNEL PRACTICES. The service provider must comply with the agency management and personnel practices as described in OAR 411-323-0050.

(D) 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 developmental disabilities, and training on the support needs of the individual to whom they will provide support;

(E) 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(6);

(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

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(IV) At least one staff member on duty with training to meet other specific behavior intervention needs as determined through ISP processes.

## (2) PROVIDER QUALIFICATIONS.

(a) Employment Specialists must possess and demonstrate the following qualifications:

(A) Demonstrate knowledge of developmental disability services;

(B) Demonstrate 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 he or she is capable of safely and adequately performing the tasks to support an individual's ISP and CDP, with such demonstration confirmed in writing by the individual, or as applicable, the individual's legal or designated representative, and 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 provider has knowledge of emergency procedures specific to the individual receiving services.

(b) A provider of Job Development services must also possess and demonstrate the following qualifications:

(A) Possess knowledge of best practice methodologies for Job Development; and

(B) Be able to demonstrate the core competencies of a Job Developer 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.

(c) A provider of Job Coaching services must also possess and demonstrate the following qualifications:

(A) Knowledge of best practice methodologies for Job Coaching; and

(B) Be able to demonstrate the core competencies of a Job Coach 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.

(d) A provider of Discovery/Career Exploration services must also possess and demonstrate the following qualifications:

(A) Knowledge of best practice methodologies for conducting Discovery/Career Exploration; and

(B) Be able to demonstrate the core competencies of a Discovery/Career Exploration provider including skills to facilitate the discovery/career exploration process, apply person-centered planning techniques, develop an employment portfolio, identify a job seekers strengths, interests, and talents, and integrate all pertinent information required by the Department into a Discovery Profile.

(e) A provider of Employment Path services provider must also possess and demonstrate the following qualifications:

(A) Knowledge of best practice methodologies for providing Employment Path Services; and

(B) Be able to demonstrate the core competencies of an Employment Path skills provider to provide learning and work experiences to teach general, non-job-task-specific strengths and skills.

(f) **PERSONAL SUPPORT WORKER QUALIFICATIONS.** Each personal support worker must meet the qualifications described in OAR chapter 411, division 375. Personal Support Workers must not provide services for the following:

(A) Individual Employment Support - Job Development

(B) Small Group Employment Support

(C) Employment Path

(D) Discovery/Career Exploration

(3) **PROVIDER TRAINING.**

(a) Employment Specialists employed by an agency must complete the following training:

(A) A review of the Department's rules governing Employment Services and Day Support Activities;

(B) CPR and First Aid by a recognized training agency and within 90 days of hire;

(C) Six hours of pre-service training including:

(i) Mandatory abuse reporting training;

(ii) Training to work with individuals with developmental disabilities, and

(iii) Training on the employment service and support needs of the individual to whom they will provide support.

(b) The agency service provider must keep documentation of required training in the personnel files of the Employment Specialist.

(c) All Employment Specialists must complete the following training by January 1, 2015:

(A) Job Coaches must complete a minimum of one Department approved training for Job Coaching.

(B) Job Developers must complete a minimum of one Department approved training for Job Development.

(C) Employment Path providers must complete a minimum of one Department approved training for Employment Path Services.

(D) Discovery/ Career Exploration providers must complete a minimum of one Department approved training for Discovery/Career Exploration.

(4) **PROVIDER DUTIES.** An Employment Specialist must have a job description with clearly stated job responsibilities. The job description must be current, signed by the Employment Specialist, and dated. The job description must also include duties specific to the area of specialization, including Job Coach, Job Developer, Discovery/Career Exploration provider, or Employment Path Services provider.

(5) **DISQUALIFICATION.** Employment Specialists must self-report any potentially disqualifying condition as described in OAR 407-007-0280 and 407-007-0290. The Employment Specialists must notify the Department or the Department's designee within 24 hours.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 430.610, 430.630 & 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

## 411-345-0050

### Reciprocal Compliance for Agency Providers

(1) The Department may accept compliance with other formally recognized standards as assurance of compliance with all or part of these rules.

(2) An employment service provider seeking an endorsement based on compliance with other standards must provide the Department with a copy of the complete detailed report from the reviewing group. Where there are differences between other standards and Oregon Administrative Rules, the Oregon Administrative Rules shall take precedence.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 430.610, 430.630 & 430.670

Hist.: MHD 13-1990, f. & cert. ef. 12-7-90; Renumbered from 309-047-0018, 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; APD 27-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14

## 411-345-0085

### Reports and Recordkeeping

(1) For each individual supported, service providers being paid for Job Development services must report activity at least monthly to the individual's services coordinator or personal agent.

(2) For each individual supported, service providers being paid for Discovery and Career Exploration services must complete a Discovery Profile and submit it to the individual's services coordinator or personal agent.

(3) 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

## 411-345-0090

### Variances for Agency Providers

(1) The Department may grant a variance to these rules based upon a demonstration by an agency service provider that an alternative method or different approach provides equal or greater program effectiveness and

# ADMINISTRATIVE RULES

does not adversely impact the welfare, health, safety, or rights of individuals.

(2) The agency service provider requesting a variance must submit, in writing, an application to the CDDP that contains the following:

- (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; and

(d) If the variance applies to an individual's services, evidence that the variance is consistent with an individual's currently authorized ISP.

(3) The CDDP must forward the signed variance request form to the Department within 30 days of receipt of the request for variance indicating the CDDP's position on the proposed variance.

(4) The Department shall approve or deny the request for a variance.

(5) The Department's decision shall be sent to the service provider, the CDDP, and to all relevant Department programs or offices within 30 calendar days of the receipt of the variance request.

(6) The service provider may appeal the denial of a variance, within 10 working days of the denial, by sending a written request for review to the Director and a copy of the request to the CDDP. The Director's decision is final.

(7) The Department shall determine the duration of the variance.

(8) The service provider may implement a variance only after written approval from the Department.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 430.610, 430.630 & 430.670

Hist.: MHD 26-1982(Temp), f. & cf. 12-3-82; MHD 9-1983, f. & cf. 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 309-047-0040, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 14-2011, f. & cert. ef. 7-1-11; SPD 1-2012, f. & cert. ef. 1-6-12; APD 27-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14

## 411-345-0095

### Service and Payment Limitations

(1) Effective service rates as authorized in Department payment and reporting systems for individuals enrolled in employment and day support activities and paid to service providers for delivering employment or day support activities, as described in these rules, shall be based upon collective bargaining agreement or an agency fee schedule published by the Department.

(2) Only one service may be billed per individual per hour. Payments based on an outcome are not in conflict with payments made based on direct service delivery.

(3) Employment Services and payment for employment service are limited to:

(a) 25 hours per week or 108.3 hours per month, on average, for any combination of Job Coaching, Small Group Employment Support, and Employment Path services;

(b) Forty (40) hours in any one week for Job Coaching; and

(c) If an individual is utilizing less than 25 hours of Job Coaching in any one week, Employment Services may be combined with Small Group Employment Support and Employment Path Services so long as the combination of services does not exceed 25 hours per week or 108.3 hours per month on average.

(4) Exceptions to the service and payment limitations may be considered by the Department based upon applicable Department policy.

Stat. Auth.: ORS 409.050 & 430.662

Stats. Implemented: ORS 430.610, 430.662, 430.670

Hist.: 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

## 411-345-0100

### Staffing Requirements

(1) Each service provider must provide direct service staff appropriate to the number and level of individuals served as follows:

(a) Supported employment and community based service providers must provide adequate direct services staff to ensure initial service and site development, training, and ongoing support to ensure that individual's rights, basic health, and safety are met. A staff member must contact individual's receiving services through supported employment or community based sites two times per month at minimum.

(b) Facility based service providers must provide adequate direct services staff to ensure that individual's rights, basic health, and safety are met. When individuals are present, the service provider must provide and document that there are staff trained in the following areas:

(A) At least one staff member on duty with CPR certification at all times;

(B) At least one staff member on duty with current First Aid certification at all times;

(C) At least one staff member on duty with training to meet other specific medical needs as determined through ISP processes; and

(D) At least one staff member on duty with training to meet other specific behavior intervention needs as determined through ISP processes.

(2) Each service provider must meet all additional requirements for direct service staff ratios and specialized training as specified by contract requirements.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 430.610, 430.630 & 430.670

Hist.: MHD 26-1982(Temp), f. & cf. 12-3-82; MHD 9-1983, f. & cf. 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 309-047-0045, 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 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; Suspended by APD 27-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14

## 411-345-0110

### Individual Rights

(1) The agency must have and implement written policies and procedures that protect the individual rights described in subsection (4) of this section.

(2) Upon enrollment, request, and annually thereafter, the individual rights described in subsection (4) of this section must be provided to an individual and the legal or designated representative of an individual.

(3) The individual rights described in this rule 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.

(4) While receiving developmental disability services, an individual has the right to:

(a) Be free and protected 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, protective physical intervention, chemical restraint, or mechanical restraint and assured that 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;

(c) 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;

(d) Informed, voluntary, written consent prior to receiving services, except in a medical emergency or as otherwise permitted by law;

(e) Informed, voluntary, written consent prior to participating in any experimental programs;

(f) A humane service environment that affords reasonable protection from harm, reasonable privacy in all matters that do not constitute a documented health and safety risk to the individual, and access and the ability to engage in private communications with any public or private rights protection program, services coordinator, and others chosen by the individual, through personal visits, mail, telephone, or electronic means;

(g) Contact and visits with legal and medical professionals, legal or designated representatives, family members, friends, advocates, and others chosen by the individual, except where prohibited by court order;

(h) Participate regularly in the community and use community resources, including recreation, developmental disability services, employment services and day support activities, school, educational opportunities, and health care resources;

(i) Access to a free and appropriate public education for children and adults less than 21 years of age, including a procedure for school attendance or refusal to attend.

(j) Reasonable and lawful compensation for performance of labor, except personal housekeeping duties;

(k) Manage the individual's own money and financial affairs unless the right has been taken away by court order or other legal procedure;

(l) Keep and use personal property, personal control and freedom regarding personal property, and a reasonable amount of personal storage space;

(m) Adequate food, housing, clothing, medical and health care, supportive services, and training;

(n) Seek a meaningful life by choosing from available services, service settings, and service providers consistent with the support needs of the individual identified through a functional needs assessment, and enjoying the benefits of community involvement and community integration.

# ADMINISTRATIVE RULES

(A) Services must promote independence and dignity and reflect the age and preferences of the individual; and

(B) The services must be provided in a setting and under conditions that are most cost effective and least restrictive to the liberty of the individual, least intrusive to the individual, and that provide for self-directed decision-making and control of personal affairs appropriate to the preferences, age, and identified support needs of the individual;

(o) 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;

(p) Ongoing opportunity to participate in the planning of services in a manner appropriate to the capabilities of the individual, including the right to participate in the development and periodic revision of the plan for services, the right to be provided with a reasonable explanation of all service considerations through choice advising, and the right to invite others chosen by the individual to participate in the plan for services;

(q) Request a change in the plan for services;

(r) A timely decision upon request for a change in the plan for services;

(s) Advance written notice of any action that terminates, suspends, reduces, or denies a service or request for service, and notification of other available sources for necessary continued services;

(t) A hearing to challenge an action that terminates, suspends, reduces, or denies a service or request for service;

(u) Exercise all rights set forth in ORS 426.385 and 427.031 if the individual is committed to the Department;

(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), the procedures for reporting abuse, and the procedures for filing complaints, reviews, or requests for hearings if services have been or are proposed to be terminated, suspended, reduced, or denied;

(w) Have these rights and procedures prominently posted in a location readily accessible to individuals and made available to representatives of the individual;

(x) Be encouraged and assisted in exercising all legal, civil, and human rights accorded to other citizens of the same age, except when limited by a court order;

(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; and

(z) Freedom to exercise all rights described in this rule without any form of reprisal or punishment.

(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, unless specifically prohibited by law in the case of children less than 18 years of age.

(6) An individual who is receiving developmental disability services, or as applicable a legal or designated representative of the individual, has the right under ORS 430.212 to 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.

(7) 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.

(8) Nothing in this rule may be construed to alter any legal rights and responsibilities between a parent and child.

(9) 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 the 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 & 430.662

Stats. Implemented: ORS 430.610, 430.662, 430.670

Hist.: MHD 26-1982(Temp), f. & cert. ef. 12-3-82; MHD 9-1983, f. & cert. 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

## 411-345-0130

### Complaints, Notification of Planned Action, and Hearings

(1) The service provider must implement written policies and procedures for individuals' grievances as required by OAR 411-323-0060.

(2) The service provider must send a copy of the grievance to the services coordinator within 15 working days of initial receipt of the grievance.

(3) At entry to service and as changes occur, the service provider must inform each individual, and as applicable the individual's legal or designated representative, orally and in writing of the service provider's grievance policy and procedures and a description of how the individual may utilize them.

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 309-047-0060, 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

## 411-345-0140

### Entry, Exit, and Transfer Requirements for Agency Service Providers

(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) ENTRY. For individuals who receive case management from a CDDP an entry ISP team meeting must be conducted prior to the initiation of services for an individual.

(a) A service provider must acquire the following information prior to or upon an individual's entry ISP team meeting:

(A) A copy of the individual's eligibility determination document;

(B) A statement indicating the individual's safety skills, including the individual's ability to evacuate from a building when warned by a signal device;

(C) A brief written history of any behavioral challenges, including supervision and support needs;

(D) Documentation of the individual's current physical condition, including any physical limitations that may affect employment;

(E) Documentation of any guardianship, conservatorship, health care representation, or any other legal restriction on the rights of the individual (if applicable); and

(F) A copy of the individual's most recent ISP (if applicable) and CDP (if applicable).

(b) The findings of the entry meeting must be recorded in the individual's file and include at a minimum:

(A) The name of the individual proposed for services;

(B) The date of the meeting;

(C) The date determined to be the individual's date of entry;

(D) Documentation of the participants included in the meeting;

(E) Documentation as required by OAR 411-345-0190 and 411-345-0200;

(F) Documentation of the pre-entry information required by subsection (a) of this section;

(G) Documentation of the proposed Transition Plan for services to be provided;

(H) Documentation of the type of employment or day support activities service the individual is to receive; and

(I) Documentation of the decision to serve the individual requesting services.

(3) VOLUNTARY TRANSFERS AND EXITS.

(a) An agency service provider must promptly notify an individual's services coordinator or personal agent if an individual, or as applicable the individual's legal or designated representative, gives notice of the individual's intent to exit services or the individual abruptly exits services.

(b) A service provider must notify an individual's services coordinator or personal agent prior to an individual's voluntary transfer or exit from services.

(c) Notification and authorization of an individual's voluntary transfer or exit must be documented in the individual's record.

# ADMINISTRATIVE RULES

(d) Before a transfer, an individual must be presented with at least three appropriate placement setting options, including at least two different types of settings, as described in OAR 411-320-0110.

## (4) INVOLUNTARY TRANSFERS AND EXITS.

(a) An agency service provider must only transfer or exit an individual involuntarily for one or more of the following reasons:

(A) The individual's behavior poses an imminent risk of danger to self or others;

(B) The individual experiences a medical emergency;

(C) The individual's service needs exceed the ability of the service provider;

(D) The individual fails to pay for services; or

(E) The service provider's certification or endorsement described in OAR chapter 411, division 323 is suspended, revoked, not renewed, or voluntarily surrendered.

(b) NOTICE OF INVOLUNTARY TRANSFER OR EXIT. An agency service provider must not transfer or exit an individual involuntarily without 30 days advance written notice to the individual, the individual's legal or designated representative (as applicable), and the services coordinator or personal agent, 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 Transfer or Exit form approved by the Department and include:

(i) The reason for the transfer or exit; and

(ii) The individual's right to a hearing as described in subsection (d) of this section.

(B) A notice is not required when an individual, or as applicable the individual's legal or designated representative, requests a transfer or exit.

(c) An agency service provider may give less than 30 days advanced 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 individual's legal or designated representative (as applicable), and the services coordinator or personal agent immediately upon determination of the need for a transfer or exit.

(d) HEARING RIGHTS. An individual must be given the opportunity for a hearing under ORS cChapter 183 to dispute an involuntary transfer or exit as described in OAR 411-318-0030. If an individual or the legal or designated representative of the individual (as applicable) 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 transfer or exit as described in subsection (c) of this section and the individual or the legal or designated representative of the individual (as applicable) has requested a hearing, the service provider must reserve service availability for the individual until receipt of the final order.

## (5) EXIT MEETING.

(a) An individual's ISP team must meet before any decision is made to exit services. Findings of such a meeting must be recorded in the individual's file and include at a minimum:

(A) The name of the individual considered for exit;

(B) The date of the 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 the strategies to prevent the individual's exit from services (unless the individual, or as applicable the individual's legal or designated representative, is requesting the exit);

(F) Documentation of the decision regarding the individual's exit, including verification of the voluntary decision to transfer or 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.

(b) Requirements for an exit meeting may be waived if an individual is immediately removed from services under the following conditions:

(A) The individual, or as applicable the individual's legal or designated representative, requests an immediate removal from services; or

(B) The individual is removed by legal authority acting pursuant to civil or criminal proceedings.

(6) TRANSFER MEETING. An individual's ISP team must meet to discuss any proposed transfer of an individual from one agency site to another before any decision to transfer is made. Findings of such a meeting must be recorded in the individual's file and include at a minimum:

(a) The name of the individual considered for transfer;

(b) The date of the meeting or telephone call;

(c) Documentation of the participants included in the meeting or telephone call;

(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 individual's legal or designated representative or family members, cannot be honored;

(g) Documentation of the voluntary decision to transfer or exit or a copy of the Notice of Involuntary Transfer or Exit; and

(h) The individual's written plan for services after the transfer.

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; MHD 2-2003(Temp), f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-047-0065, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 14-2011, f. & cert. ef. 7-1-11; 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

## 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.

(2) In order to receive Employment Services, an individual must have an employment related goal in his or her ISP.

(3) A Career Development Plan (CDP) and informal vocational assessment must be developed and implemented with the ISP as follows:

(a) The CDP must:

(A) Focus on the strengths of the individual;

(B) Prioritize employment in integrated settings;

(C) Be based on person-centered planning principles;

(D) Include a current and accurate vocational assessment; and

(E) Be completed with the goal of maximizing the number of hours spent working consistent with an individual's interests, abilities, and choices.

(b) The following individuals must develop a CDP as a part of the annual ISP process:

(A) All working age individuals who work in Sheltered Workshops;

(B) Transition aged youth no later than one year after departure from the Oregon public schools; and

(C) All other individuals who request a Career Development Plan.

(c) Effective January 1, 2015, all individuals receiving services under these rules must develop a Career Development Plan as a part of the annual ISP.

(4) For agency provided services, the ISP must be implemented, including a Career Development Plan (CDP), where applicable, and a copy of each individual's ISP must be available at the service site within 60 days of entry and updated at least annually or as changes occur.

(5) Agency service providers must:

(a) Assign a staff member to participate as a team member in the development of an individual's ISP and CDP when invited by the individual or the individual's legal or designated representative (as applicable);

(b) Follow any required process and format as described in this rule;

(c) Train staff to understand each individual's ISP, CDP, and supporting documents and to provide individual services; and

(d) Comply with Department rules and policies regarding the ISP and CDP.

(6) Agency providers must participate in a face-to-face meeting annually with an individual's ISP team. An exception is made when:

(a) The individual chooses not to participate in the meeting or the individual's legal representative objects to the individual's participation in the face-to-face meeting. The individual must receive a copy of the ISP and CDP related to the necessary delivery of services; or

(b) The individual, or as applicable the individual's legal or designated representative, objects to the participation of a service provider during the face-to-face meeting.

(7) 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 individual's current ISP and CDP to determine the ongoing appropriateness and adequacy of the services and supports identified in the ISP and CDP; and

(c) Share all materials drafted in preparation for the ISP meeting with the ISP team one week in advance of the ISP meeting.

(8) The service provider must receive a copy of the ISP and CDP, 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

# ADMINISTRATIVE RULES

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

## 411-345-0170

### Behavior Support

For an agency certified by the Department to provide services under these rules and endorsed under the rules in OAR chapter 411, division 323:

(1) Agency service providers must have and implement a written policy for behavior support utilizing individualized positive support techniques and prohibiting abusive practices.

(2) The agency service provider must inform the individual, and as applicable the individual's legal or designated representative, of the behavior support policy and any applicable procedures at the time of entry to services and as changes to the behavior policy occur.

(3) Prior to the development of a Behavior Support Plan, the agency service provider must conduct a functional behavioral assessment of the behavior, which must be based upon information provided by one or more people who know the individual. The functional behavioral assessment must include:

(a) A clear, measurable description of the behavior that includes (as applicable) frequency, duration, and intensity of the behavior;

(b) A clear description and justification of the need to alter the behavior;

(c) An assessment of the meaning of the behavior that includes the possibility that the behavior is one or more of the following:

(A) An effort to communicate;

(B) The result of a medical condition;

(C) The result of a psychiatric condition; or

(D) The result of environmental causes or other factors.

(d) A description of the context in which the behavior occurs; and

(e) A description of what currently maintains the behavior.

(4) A Behavior Support Plan must include:

(a) An individualized summary of the individual's needs, preferences, and relationships;

(b) A summary of the functions of the behavior as derived from the functional behavioral assessment;

(c) Strategies that are related to the functions of the behavior and are expected to be effective in reducing problem behaviors;

(d) Prevention strategies, including environmental modifications and arrangements;

(e) Early warning signals or predictors that may indicate a potential behavioral episode and a clearly defined plan of response;

(f) A general crisis response plan that is consistent with OIS;

(g) A plan to address post crisis issues;

(h) A procedure for evaluating the effectiveness of the Behavior Support Plan that includes a method of collecting and reviewing data on frequency, duration, and intensity of the behavior;

(i) Specific instructions for staff who provide support to follow regarding the implementation of the Behavior Support Plan; and

(j) Positive behavior supports that includes the least intrusive intervention possible.

(5) Agency service providers must maintain the following additional documentation for implementation of Behavior Support Plans:

(a) Written evidence that the individual, the individual's legal or designated representative (as applicable), and the ISP team are aware of the development of the Behavior Support Plan and any objections or concerns;

(b) Written evidence of the ISP team decision for approval of the implementation of the Behavior Support Plan; and

(c) Written evidence of all informal and positive strategies used to develop an alternative behavior.

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 309-047-0080, 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

## 411-345-0180

### Protective Physical Intervention for Agency Providers

For an agency certified by the Department to provide services under these rules and endorsed under the rules in OAR chapter 411, division 323:

(1) The service provider must only employ protective physical intervention techniques that are included in the approved OIS curriculum or as approved by the OIS Steering Committee. Protective physical intervention techniques must only be applied:

(a) When the health and safety of the individual and others are at risk and the ISP team has authorized the procedures in a documented ISP team decision that is included in the ISP and uses procedures that are intended to lead to less restrictive intervention strategies;

(b) As an emergency measure if absolutely necessary to protect the individual or others from immediate injury; or

(c) As a health related protection ordered by a physician if absolutely necessary during the conduct of a specific medical or surgical procedure, or for the individual's protection during the time that a medical condition exists.

(2) Staff supporting an individual must be trained and certified in OIS when the individual has a history of behavior requiring protective physical intervention and the ISP team has determined there is probable cause for future application of protective physical intervention. Documentation verifying current OIS certification of staff must be maintained in the staff person's personnel file and be available for review by the Department or the Department's designee.

(3) The service provider must obtain the approval of the OIS Steering Committee for any modification of standard OIS protective physical intervention techniques. The request for modification of protective physical intervention techniques must be submitted to the OIS Steering Committee and must be approved in writing by the OIS Steering Committee prior to the implementation of the modification. Documentation of the approval must be maintained in the individual's record.

(4) Use of protective physical intervention techniques in emergency situations that are not part of an approved Behavior Support Plan must:

(a) Be reviewed by the service provider's executive director or the executive director's designee within one hour of application;

(b) Be used only until the individual is no longer an immediate threat to self or others;

(c) Be documented as an incident report and submitted to the services coordinator, personal agent, or other Department designee (if applicable) and the individual's legal representative (if applicable), no later than one working day after the incident has occurred; and

(d) Prompt an ISP team meeting if an emergency intervention is used more than three times in a six-month period.

(5) Any use of protective physical intervention must be documented in an incident report, excluding circumstances as described in section (8) of this rule. The incident report must include:

(a) The name of the individual to whom the protective physical intervention was applied;

(b) The date, type, and length of time the protective physical intervention was applied;

(c) A description of the incident precipitating the need for the use of the protective physical intervention;

(d) Documentation of any injury;

(e) The name and position of the staff member applying the protective physical intervention;

(f) The name and position of the staff witnessing the protective physical intervention;

(g) The name and position of the person providing the initial review of the use of the protective physical intervention; and

(h) Documentation of an administrative review by the service provider's executive director or the executive director's designee who is knowledgeable in OIS as evident by a job description that reflects this responsibility, which includes the follow-up to be taken to prevent a recurrence of the incident.

(6) The service provider must forward a copy of the incident report within five working days of the incident to the services coordinator or personal agent and the individual's legal representative (if applicable).

(a) The services coordinator, personal agent, or the Department designee (if applicable) must receive a complete copy of the incident report.

(b) A copy of an incident report may not be provided to an individual's legal representative or other service provider when the report is part of an abuse or neglect investigation.

(c) A copy of an incident report provided to an individual's legal representative or other service provider must have confidential information about other individuals removed or redacted as required by federal and state privacy laws.

(7) All protective physical interventions resulting in injuries must be documented in an incident report and forwarded to the services coordinator, personal agent, or other Department designee (if applicable), within one working day of the incident.

(8) The service provider may substitute a behavior data summary in lieu of individual incident reports when:

# ADMINISTRATIVE RULES

- (a) There is no injury to the individual or others;
- (b) The intervention utilized is not a protective physical intervention;
- (c) There is a formal written functional behavioral assessment and a written Behavior Support Plan;
- (d) The individual's Behavior Support Plan defines and documents the parameters of the baseline level of behavior;
- (e) The protective physical intervention techniques and the behaviors for which the protective physical intervention techniques are applied remain within the parameters outlined in the individual's Behavior Support Plan and the OIS curriculum;
- (f) The behavior data collection system for recording observation, intervention, and other support information critical to the analysis of the efficacy of the Behavior Support Plan is also designed to record items as required in section (5) of this rule; and
- (g) There is written documentation of an ISP team decision that a behavior data summary had been authorized for substitution in lieu of incident reports.

(9) A copy of the behavior data summary must be forwarded every 30 days to the services coordinator, personal agent, or other Department designee (if applicable) and the individual's legal representative (if applicable).

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 309-047-0085, 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

## 411-345-0190

### Medical Services

For an agency certified by the Department to provide services under these rules and endorsed under the rules in OAR chapter 411, division 323:

(1) All individuals' medical records must be kept confidential as described in OAR 411-323-0060.

(2) Agency service providers must have and implement written policies and procedures that describe the medical management system, including medication administration, early detection and prevention of infectious disease, self-administration of medication, drug disposal, emergency medical procedures including the handling of bodily fluids, and confidentiality of medical records.

(3) Individuals must receive care that promotes their health and well-being as follows:

(a) The service provider must observe the health and physical condition of an individual and take action in a timely manner in response to identified changes in condition that may lead to deterioration or harm;

(b) The service provider must assist an individual with the use and maintenance of prosthetic devices as necessary for the activities of the service;

(c) The service provider, with the individual's knowledge, must share information regarding medical conditions with the individual's residential contact (if applicable) and the services coordinator or personal agent; and

(d) The service provider must provide rest and lunch periods at least as required by applicable law unless the individual's needs dictate additional time.

(4) Agency service providers must maintain records on each individual to aid physicians, medical professionals, and the service provider in understanding the individual's medical history and current treatment program. These records must be kept current and organized in a manner that permits a staff and medical person to easily follow the individual's course of treatment. Such documentation must include:

(a) A medical history obtained prior to entry to services including where available:

(A) A copy of a record of immunizations; and

(B) A list of known communicable diseases and allergies.

(b) A record of the individual's current medical condition including:

(A) A copy of all current orders for medication administered and maintained at the service provider's site;

(B) A list of all current medications; and

(C) A record of visits to medical professionals, consultants, or therapists if facilitated or provided by the service provider.

(5) The administration of medication at the service site must be avoided whenever possible. When medications, treatments, equipment, or special diets must be administered or monitored for self-administration, the service provider must:

(a) Obtain a copy of a written order signed by a physician, physician's designee, or medical practitioner prescribing the medication, treatment, special diet, equipment, or other medical service; and

(b) Follow written orders.

(6) PRN orders are not accepted for psychotropic medication.

(7) All medications administered or monitored in the case of self-administration must be:

(a) Kept in their original containers;

(b) Labeled by the dispensing pharmacy, product manufacturer, or physician, as specified per the physician's or licensed health care practitioner's written order;

(c) Kept in a secured locked container and stored as indicated by the product manufacturer; and

(d) Recorded on an individualized Medication Administration Record (MAR), including treatments and PRN orders.

(8) The MAR must include:

(a) The name of the individual;

(b) The brand or generic name of the medication, including the prescribed dosage and frequency of administration as contained on the physician's order and medication;

(c) For topical medications and basic first aid treatments utilized without a physician's order, a transcription of the printed instructions from the package or the description of the basic first aid treatment provided;

(d) Times and dates of administration or self-administration of the medication;

(e) The signature of the staff administering the medication or monitoring the self-administration of the medication;

(f) Method of administration;

(g) Documentation of any known allergies or adverse reactions to a medication;

(h) Documentation and an explanation of why a PRN medication was administered and the results of such administration; and

(i) An explanation of any medication administration irregularity with documentation of administrative review by the service provider's executive director or the executive director's designee.

(9) Safeguards to prevent adverse medication reactions must be utilized to include:

(a) Maintaining information about each prescribed medication's effects and side-effects;

(b) Communicating any concerns regarding any medication usage, effectiveness, or effects to the residential contact (if applicable) and the services coordinator or personal agent; and

(c) Prohibiting the use of one individual's medications by another.

(10) The service site or service provider may not keep unused, discontinued, outdated, or recalled medication, or medication containers with worn, illegible, or missing labels. All unused, discontinued, outdated, or recalled medication or medication containers with worn, illegible, or missing labels must be promptly disposed of in a manner consistent with federal statutes and designed to prevent illegal diversion of the substances into the possession of people other than for whom the medication was prescribed. The service provider must maintain a written record of all disposed medications that includes:

(a) Date of disposal;

(b) A description of the medication, including amount;

(c) The name of the individual for whom the medication was prescribed;

(d) The reason for disposal;

(e) The method of disposal;

(f) Signature of staff disposing; and

(g) For controlled medications, the signature of a witness to the disposal.

(11) For any individual who is self-administering medication while receiving services from an agency provider, the service provider must:

(a) Have documentation that a training program was initiated with approval of the individual's ISP team or that training for the individual is unnecessary;

(b) If necessary, have a training program that is consistent with the self-administration training program in place at the individual's residence;

(c) If necessary, have a training program that provides for retraining when there is a change in dosage, medication, or time of delivery;

(d) Have specific supports identified and documented for the individual when training has been deemed unnecessary; and

(e) Provide for an annual review, at a minimum, as part of the ISP process, upon completion of the training program or when training for the individual has been deemed necessary by the individual's ISP team.

(12) The service provider must ensure that individuals able to self-administer medications keep the medications secured, unavailable to any other person, and stored as recommended by the product manufacturer.

# ADMINISTRATIVE RULES

(13) The service provider must immediately contact the services coordinator or personal agent when an individual's medical, behavioral, or physical needs change to a point that the individual's needs may not be met by the service provider. The ISP team may determine alternative service providers or may arrange other services if necessary.

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 309-047-0090, 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

## 411-345-0200

### Individual Summary Sheets and Emergency Information for Agency Providers

For an agency certified by the Department to provide services under these rules and endorsed under the rules in OAR chapter 411, division 323:

(1) A current one to two page summary sheet record must be maintained at the agency service provider's primary place of business for each individual receiving services. The record must include:

(a) The individual's name, current address, telephone number, date of entry into services, date of birth, gender, preferred hospital, medical prime and private insurance number (if applicable), and guardianship status; and

(b) The name, address, and telephone number of:

(A) The individual's legal or designated representative, family, and other significant person (as applicable);

(B) The individual's preferred physician, secondary physician, and clinic;

(C) The individual's preferred dentist;

(D) The individual's services coordinator or personal agent; and

(E) Other agencies and representatives providing services and supports to the individual.

(2) A service provider must maintain emergency information for each individual receiving supports and services from the service provider in addition to an individual summary sheet identified in section (1) of this rule. The emergency information must be kept current and must include:

(a) The individual's name;

(b) The service provider's name, address, and telephone number;

(c) The address and telephone number of the residence where the individual lives;

(d) The individual's physical description, which may include a picture and the date the picture was taken, and identification of:

(A) The individual's race, gender, height, weight range, hair, and eye color; and

(B) Any other identifying characteristics that may assist in identifying the individual may the need arise, such as marks or scars, tattoos, or body piercing.

(e) Information on the individual's abilities and characteristics including:

(A) How the individual communicates;

(B) The language the individual uses or understands;

(C) The ability of the individual to know and take care of bodily functions; and

(D) Any additional information that may assist a person not familiar with the individual to understand what the individual may do for him or herself.

(f) The individual's health support needs including:

(A) Diagnosis;

(B) Allergies or adverse drug reactions;

(C) Health issues that a person needs to know when taking care of the individual;

(D) Special dietary or nutritional needs, such as requirements around the textures or consistency of foods and fluids;

(E) 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;

(F) 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;

(G) Physical limitations that may affect the individual's ability to communicate, respond to instructions, or follow directions; and

(H) Specialized equipment needed for mobility, positioning, or other health related needs.

(g) The individual's emotional and behavioral support needs including:

(A) Mental health or behavioral diagnosis and the behaviors displayed by the individual; and

(B) Approaches to use when dealing with the individual to minimize emotional and physical outbursts.

(h) Any court ordered or legal representative authorized contacts or limitations;

(i) The individual's supervision requirements and why; and

(j) Any additional pertinent information the service provider has that may assist in the care and support of the individual in the event of a natural or man-made disaster.

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 309-047-0095, 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

## 411-345-0230

### Incident Reports and Emergency Notifications by Agency Providers

For an agency certified by the Department to provide services under these rules and endorsed under the rules in OAR chapter 411, division 323:

(1) A written incident report describing any injury, accident, act of physical aggression, or unusual incident involving an individual must be placed in the individual's record. The incident report must include:

(a) Conditions prior to, or leading to, the incident;

(b) A description of the incident;

(c) Staff response at the time; and

(d) Administrative review and follow-up to be taken to prevent a recurrence of the injury, accident, physical aggression, or unusual incident.

(2) Copies of incident reports for all unusual incidents (as defined by OAR 411-345-0020) must be sent to the services coordinator or personal agent within five working days of the unusual incident.

(3) The service provider must immediately notify the CDDP or Brokerage of an incident or allegation of abuse falling within the scope of OAR 407-045-0260(1).

(4) In the case of an unusual incident requiring emergency response, the service provider must immediately notify:

(a) The individual's legal representative, parent, next of kin, designated representative, and other significant person (as applicable);

(b) The CDDP or Brokerage;

(c) The individual's residential contact; and

(d) Any other agency responsible for the individual.

(5) In the case of an individual who is missing or absent without supervision beyond the time frames established by the ISP team, the service provider must immediately notify:

(a) The individual's designated representative (if applicable);

(b) The individual's legal representative or nearest responsible relative (as applicable);

(c) The individual's residential contact;

(d) The local police department; and

(e) The CDDP or Brokerage.

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 309-047-0110, 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 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

## 411-345-0240

### Emergency Plan and Safety Review for Agency Providers

For an agency certified by the Department to provide services under these rules and endorsed under the rules in OAR chapter 411, division 323:

(1) Agency service providers must develop, keep current, and implement a written emergency plan for the protection of all individuals in the event of an emergency or disaster. The emergency plan must:

(a) Be practiced at least annually;

(b) Consider the needs of the individuals being supported and address all natural and human-caused events identified as a potential significant risk to the individuals, such as a pandemic or an earthquake;

(c) Coordinate with each residential provider or residential contact to address the possibility of emergency or disaster resulting in the following:

(A) Extended utility outage;

(B) No running water;

(C) Inability to provide food or supplies; and

(D) Staff unable to report as scheduled.

(d) Include provisions for evacuation and relocation that identifies:

(A) The duties of staff during evacuation, transport, and housing of individuals;

# ADMINISTRATIVE RULES

(B) The requirement for staff to notify the Department and the local CDDP and Brokerage offices of the plan to evacuate or the evacuation of the facility, as soon as the emergency or disaster reasonably allows;

(C) The method and source of transportation;

(D) Planned relocation sites that are reasonably anticipated to meet the needs of the individuals;

(E) A method that provides a person unknown to the individual the ability to identify the individual by the individual's name and to identify the name of the individual's service provider; and

(F) A method for tracking and reporting to the Department, local CDDP and Brokerage offices, or designee, the physical location of each individual until a different entity resumes responsibility for the individual.

(e) Address the needs of the individual, including medical needs; and

(f) Be submitted to the Department as a summary, per Department format, at least annually and upon revision and change of ownership.

(2) Agency service providers must post the following emergency telephone numbers in close proximity to all phones used by staff:

(a) The telephone numbers of the local fire, police department, and ambulance service, if not served by a 911 emergency service; and

(b) The telephone number of the service provider's executive director and additional people to be contacted in the case of an emergency.

(3) If an individual regularly accesses the community independently, the service 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.

(4) A documented safety review must be conducted quarterly to ensure the service site is free of hazards. The service provider must keep the quarterly safety review reports for five years and must make them available upon request by the CDDP, Brokerage, or the Department.

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 309-047-0115, 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

## 411-345-0250

### Evacuation

For an agency certified by the Department to provide services under these rules and endorsed under the rules in OAR chapter 411, division 323:

(1) The service provider must train all individuals immediately upon entry to each service site to leave the site in response to an alarm or other emergency signal.

(2) The service provider must document the level of assistance needed by each individual to safely evacuate and such documentation must be maintained in the individual's entry records.

(3) The service provider must provide, or assure provision of, necessary adaptations or accommodations to ensure evacuation safety for individuals with sensory and physically impairments.

(4) Site-based agency service providers must:

(a) Conduct unannounced evacuation drills one per quarter each year when individuals are present, unless required more often by the Oregon Occupational Safety and Health Division.

(A) Drills must occur at different times of the day.

(B) Routes to leave the site for the drill must vary based on the location of a simulated emergency.

(C) Any individual failing to evacuate the service site unassisted within three minutes, or an amount of time set by the local fire authority for the site, must be provided specialized training and support in evacuation procedures.

(b) Make written documentation at the time of each drill and keep the documentation for at least two years following the drill. Documentation must include:

(A) The date and time of the drill;

(B) The location of the simulated emergency and route of evacuation;

(C) The last names of all individuals and staff present in the service area at the time of the drill;

(D) The type of evacuation assistance provided by staff to individuals' that need more than three minutes to evacuate as specified in an individual's safety plan;

(E) The amount of time required by each individual to evacuate if the individual needs more than three minutes to evacuate;

(F) The amount of time for all individuals to evacuate exclusive of individuals with specialized support as described in section (3)(c) of this rule; and

(G) The signature of the staff conducting the drill.

(c) Develop a written safety plan for individuals who are unable to evacuate the site within the required evacuation time or who, with concurrence of the ISP team, request not to participate in evacuation drills. The safety plan must include:

(A) Documentation of the risk to the individual's medical, physical condition, and behavioral status;

(B) Identification of how the individual must evacuate the site, including level of support needed;

(C) The routes to be used to evacuate the individual to a point of safety;

(D) Identification of assistive devices required for evacuation;

(E) The frequency the plan must be practiced and reviewed by the individual and staff;

(F) The alternative practices;

(G) Approval of the plan by the individual's legal representative, services coordinator or personal agent, and the service provider's executive director; and

(H) A plan to encourage future participation in evacuation drills.

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 309-047-0120, 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

## 411-345-0260

### Physical Environment

For an agency certified by the Department to provide services under these rules and endorsed under the rules in OAR chapter 411, division 323:

(1) All employment and day support activities providers must ensure that the service site has no known health or safety hazards in the immediate environment and that individuals are trained to avoid recognizable hazards.

(2) Agency service providers must:

(a) assure that at least once every five years a health and safety inspection is conducted of owned, leased, or rented buildings and property.

(A) The inspection must cover all areas and buildings where services are delivered to individuals, administrative offices, and storage areas.

(B) The inspection may be performed by:

(i) Oregon Occupational Safety and Health Division;

(ii) The service provider's workers compensation insurance carrier;

(iii) An appropriate expert, such as a licensed safety engineer or consultant approved by the Department; or

(iv) The Oregon Public Health Division, when necessary.

(C) The inspection must cover:

(i) Hazardous material handling and storage;

(ii) Machinery and equipment used by the service provider;

(iii) Safety equipment;

(iv) Physical environment; and

(v) Food handling, when necessary.

(D) The documented results of the inspection, including recommended modifications or changes, and documentation of any resulting action taken must be kept by the service provider for five years.

(b) Ensure buildings and property at each owned, leased, or rented service site has annual 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 service provider for five years.

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 309-047-0125, 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 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

## 411-345-0270

### Vehicles and Drivers

For an agency certified by the Department to provide services under these rules and endorsed under the rules in OAR 411-323:

(1) Service providers that own or operate vehicles that transport individuals must:

(a) Maintain the vehicles in safe operating condition;

(b) Comply with Oregon Driver and Motor Vehicle Services Division laws;

(c) Maintain insurance coverage; and

(d) Carry a first-aid kit in the vehicles.

# ADMINISTRATIVE RULES

(2) Drivers operating vehicles to transport individuals must meet applicable Oregon Driver and Motor Vehicle Services Division requirements.

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 309-047-0130, 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

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**Rule Caption:** Foster Homes for Children with Intellectual or Developmental Disabilities

**Adm. Order No.:** APD 28-2014(Temp)

**Filed with Sec. of State:** 7-1-2014

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**Rules Amended:** 411-346-0110, 411-346-0150, 411-346-0180, 411-346-0190

**Subject:** The Department of Human Services (Department) is immediately amending the rules in OAR chapter 411, division 346 for foster homes for children with intellectual or developmental disabilities (CFH).

- OAR 411-346-0110 is being amended to incorporate the general definitions in 411-317-0000, update existing definitions to reflect correct terminology, and include definitions for community nursing services, delegation, hearing, positive behavioral theory and practice, qualified entity initiator, and young adult;

- OAR 411-346-0150 is being amended to include portability of background check approval to allow alternate caregivers, employees of foster providers, and volunteers to have approval to work in multiple foster homes within a county when working in the same employment role at each foster home;

- OAR 411-346-0180 is being amended to incorporate the hearing process for involuntary transfers and exits adopted in 411-318-0030; and

- OAR 411-346-0190 is being amended to clarify nursing services to provide consistency with the rules for community nursing services in OAR chapter 411, division 048.

**Rules Coordinator:** Kimberly Colkitt-Hallman—(503) 945-6398

## 411-346-0110

### Definitions

Unless the context indicates otherwise, the following definitions and the definitions in OAR 411-317-0000 apply to the rules in chapter 411, division 346:

(1) "Abuse" means:

(a) "Abuse" as defined in ORS 419B.005 for a child under the age of 18; and

(b) "Abuse" as defined in OAR 407-045-0260 when a young adult between the ages of 18 and 21 resides in a certified child foster home.

(2) "Alternate Caregiver" means any person 18 years of age and older responsible for the care or supervision of a child in foster care.

(3) "Alternative Educational Plan" means any school plan that does not occur within the physical school setting.

(4) "Appeal" means the process for a contested hearing under ORS Chapter 183 that a foster provider may use to petition the suspension, denial, non-renewal, or revocation of their certificate or application.

(5) "Applicant" means a person who wants to become a child foster provider, lives at the residence where a child in foster care is to live, and is applying for a child foster home certificate or is renewing a child foster home certificate.

(6) "Aversive Stimuli" means the use of any natural or chemical product to alter a child's behavior, such as the use of hot sauce or soap in the mouth and spraying ammonia or lemon water in the face of a child. Psychotropic medications are not considered aversive stimuli.

(7) "Background Check" means a criminal records check and abuse check as defined in OAR 407-007-0210.

(8) "Behavior Support" means 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 a child that prevents the child from accomplishing activities of daily living, instrumental activities of daily living, health related tasks, and cognitive supports to

mitigate behavior. Behavior supports are provided in the home or community.

(9) "BSP" means "Behavior Support Plan". A BSP is the written strategy based on person-centered planning and a functional assessment that outlines specific instructions for a foster provider to follow to cause the challenging behaviors of a child to become unnecessary and to change the behavior of the foster provider, adjust environment, and teach new skills.

(10) "Case Plan" means the goal-oriented, time-limited, individualized plan of action for a child and the family of the child developed by the family and the Children, Adults, and Families Division of the Department for promotion of the safety, permanency, and well-being of the child.

(11) "Case Worker" means an employee of the Children, Adults, and Families Division of the Department.

(12) "CDDP" means "Community Developmental Disability Program" as defined in OAR 411-320-0020.

(13) "Certificate" means a document issued by the Department that notes approval to operate a child foster home for a period not to exceed two years.

(14) "Certifying Agency" means the Department, CDDP, or an agency approved by the Department who is authorized to gather required documentation to issue or maintain a child foster home certificate.

(15) "Child" means:

(a) An individual who is less than 18 years of age who has a provisional determination of an intellectual or developmental disability by the CDDP; or

(b) A young adult age 18 through 21 with an intellectual or developmental disability who is remaining in the same foster home for the purpose of completing their IEP based on the recommendation of the ISP team and an approved certification variance.

(16) "Child Foster Home" means a home certified by the Department that is maintained and lived in by the person named on the foster home certificate.

(17) "Child Foster Home Contract" means an agreement between a foster provider and the Department that describes the responsibility of the foster provider and the Department.

(18) "Child Placing Agency" means the Department, CDDP, or the OYA.

(19) "Commercial Basis" means providing and receiving compensation for the temporary care of individuals not identified as members of the household.

(20) "Community Nursing Services" mean the nursing services that focus on the chronic and ongoing health and safety needs of a child. 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 48 and the Oregon State Board of Nursing rules in OAR chapter 851.

(21) "Delegation" means that a registered nurse authorizes a foster provider or alternate 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. Delegation by a physician is also allowed.

(22) "Denial" means the refusal of the certifying agency to issue a certificate of approval to operate a child foster home because the certifying agency has determined that the home or the applicant is not in compliance with one or more of these rules.

(23) "Department" means the Department of Human Services.

(24) "Developmental Disability" means "developmental disability" as defined in OAR 411-320-0020 and described in 411-320-0080.

(25) "DHS-CW" means the child welfare program area within the Children, Adults, and Families Division of the Department.

(26) "Direct 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. Direct nursing service differs from administrative nursing services. Administrative nursing services include non-individual-specific services, such as quality assurance reviews, authoring health related agency policies and procedures, or providing general training for the foster provider or alternate caregivers.

(27) "Director" means the Director of the Department of Human Services, Office of Developmental Disability Services or the designee of the Director.

(28) "Discipline" means "behavior support" as defined in this rule.

(29) "Domestic Animals" mean the animals domesticated so as to live and breed in a tame condition such as dogs, cats, and domesticated farm stock.

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(30) "Educational Surrogate" means the person who acts in place of a parent in safeguarding the rights of a 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.

(31) "Emergency Certificate" means a foster home certificate issued for 30 days.

(32) "Exit" means termination or discontinuance of a Department-funded developmental disability service by a Department licensed or certified provider.

(33) "Foster Care" means a child is placed away from their parent or guardian in a certified child foster home.

(34) "Foster Provider" means the certified care provider who resides at the address listed on the foster home certificate. A foster provider is considered a private agency for purposes of mandatory reporting of abuse.

(35) "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.

(36) "Functional Needs Assessment":

(a) Means the comprehensive assessment or re-assessment that:

(A) Documents physical, mental, and social functioning;

(B) Identifies risk factors, choices and preferences, service and support needs, strengths, and goals; and

(C) Determines the service level.

(b) The functional needs assessment for a child residing in a foster home is known as the Support Needs Assessment Profile (SNAP).

(37) "Guardian" means the parent of a child or a person or agency appointed and authorized by a court to make decisions about services for a child in foster care.

(38) "Hearing" means a contested case hearing subject to OAR 137-003-0501 to 137-003-0070, which results in a final order.

(39) "Home Inspection" means the on-site, physical review of the home of an applicant to assure the applicant meets all health and safety requirements within these rules.

(40) "Home Study" means the assessment process used for the purpose of determining the ability of an applicant to care for a child in need of foster care placement.

(41) "ICWA" means the Native American Child Welfare Act.

(42) "IEP" means "Individualized Education Plan". An IEP is a written plan of instructional goals and objectives developed in conference with a teacher, student, the guardian of the student, and a representative of the school district.

(43) "Incident Report" means the written report of any injury, accident, act of physical aggression, use of protective physical intervention, or unusual incident involving a child in foster care.

(44) "Individual" means a person with an intellectual or developmental disability applying for, or determined eligible for, developmental disability services.

(45) "Intellectual Disability" means "intellectual disability" as defined in OAR 411-320-0020 and described in OAR 411-320-0080.

(46) "Involuntary Transfer" means a foster provider has made the decision to transfer a child and the child or the parent or guardian of the child has not given prior approval.

(47) "ISP" means "Individual Support Plan". 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 the services and supports that are important for an individual to meet the needs of the individual identified through a functional needs assessment as well as the preferences of the individual for service 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, state plan, or natural supports.

(48) "ISP Team" means a team composed of the child in foster care (when appropriate), parent or guardian of the child, CDDP services coordinator, and others chosen by the child or the parent or guardian of the child, such as the foster provider or family members of the child.

(49) "Licensed Medical Professional" means a person who meets the following:

(a) Holds at least one of the following valid licensures or certifications:

(A) Physician licensed to practice in Oregon;

(B) Nurse practitioner certified by the Oregon State Board of Nursing under ORS 678.375; or

(C) Physician's assistant licensed to practice in Oregon; and

(b) Whose training, experience, and competence demonstrate expertise in children's mental health and the ability to conduct a mental health assessment and provide psychotropic medication management for a child in foster care.

(50) "Mandatory Reporter":

(a) Means any public or private official as defined in OAR 407-045-0260 who:

(A) Is a foster provider, staff, or volunteer 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 a child, regardless of whether or not the knowledge of the abuse was gained in the official capacity of the public or private official.

(B) Is a foster provider, staff, or volunteer who, while acting in an official capacity, comes in contact with an adult individual with an intellectual or developmental disability 18 years and older and has reasonable cause to believe the adult individual has suffered abuse, or comes in contact with any person whom the public or private official has reasonable cause to believe abused the adult individual.

(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 419B.231 is not required to report if the communication is privileged under 40.225 to 40.295.

(51) "MAR" means medication administration record.

(52) "Mechanical Restraint" means any mechanical device, material, object, or equipment that is attached or adjacent to the body that cannot be easily removed or easily negotiated around that restricts freedom of movement or access to the body.

(53) "Member of the Household" means any adult or child living in the home, including an employee or volunteer assisting in the care provided to a child placed in the home. A child in foster care is not considered a member of the household.

(54) "Mental Health Assessment" means the assessment used to determine the need for mental health services by interviewing a child and obtaining all pertinent biopsychosocial information as identified by the child, the family of the child, and collateral sources. A mental health assessment:

(a) Addresses the condition presented by the child;

(b) Determines a diagnosis; and

(c) Provides treatment direction and individualized services and supports.

(55) "Misuse of Funds" includes, but is not limited to, a foster provider or staff person:

(a) Borrowing from, or loaning money to, a child in foster care;

(b) Witnessing a will in which the foster provider or a staff person is a beneficiary;

(c) Adding the name of the foster provider or staff person to the bank account of a child or other titles for personal property without approval of the child when of age to give legal consent, or the child's guardian of the child and authorization of the ISP team;

(d) Inappropriately expending or theft of the personal funds of the child;

(e) Using the personal funds of a child for the benefit of the foster provider or staff person; or

(f) Commingling the funds of a child with the funds of the foster provider or the funds of another child.

(56) "Monitoring" means the observation of a certified child foster home by the Department or the designee of the Department to determine continuing compliance with these rules.

(57) "Nursing Service Plan" means the plan that is developed by a registered nurse based on an initial nursing assessment, reassessment, or an update made to a nursing assessment as the result of a monitoring visit.

(a) The Nursing Service Plan is specific to a child and identifies the diagnoses and health needs of the child and any service coordination, teaching, or delegation activities.

(b) The Nursing Service Plan is separate from the ISP and any service plans developed by other health professionals.

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(58) "Occupant" means any person having official residence in a certified child foster home.

(59) "OIS" means "Oregon Intervention System". OIS is the system of providing training to people who work with designated individuals to provide elements of positive behavior support and non-aversive behavior intervention. OIS uses principles of pro-active support and describes approved protective physical intervention techniques that are used to maintain health and safety.

(60) "OYA" means "Oregon Youth Authority". OYA is the agency that has been given commitment and supervision responsibilities over a youth offender by order of the juvenile court under ORS 137.124 or other statute, until the time that a lawful release authority authorizes release or terminates the commitment or placement.

(61) "Permanent Foster Care" means the long term contractual agreement between a foster provider and the Children, Adults, and Families Division of the Department, approved by the juvenile court that specifies the responsibilities and authority of the foster provider and the commitment by the permanent foster provider to raise a child until the age of majority or until the court determines that permanent foster care is no longer the appropriate plan for the child.

(62) "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 intervention possible;

(c) Ensures that abusive or demeaning interventions are never used; and

(d) Evaluates the effectiveness of behavior interventions based on objective data.

(63) "Protected Health Information" means any oral or written health information that identifies a child and relates to the past, present, or future physical or mental health condition of the child, health care treatment, or payment for health care treatment.

(64) "Protective Physical Intervention" means any manual physical holding of, or contact with, a child that restricts freedom of movement.

(65) "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.

(66) "Qualified Entity Initiator" has the meaning set forth in OAR 407-007-0210 (Criminal Records and Abuse Checks for Providers).

(67) "Qualified Mental Health Professional" means a licensed medical practitioner or any other meeting the minimum qualifications specified in OAR 309-019-0125.

(68) "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 supports to a child in foster care. Relief care may include 24-hour relief care or hourly relief care.

(69) "Revocation" means the action taken by the certifying agency to rescind a child foster home certificate of approval after the certifying agency has determined that the foster provider or the child foster home is not in compliance with one or more of these rules.

(70) "Services Coordinator" means "services coordinator" as defined in OAR 411-320-0020.

(71) "Significant Medical Needs" includes, but is not limited to, total assistance required for all activities of daily living, such as access to food or fluids, daily hygiene that is not attributable to the chronological age of a child, and frequent medical interventions required by a Nursing Service Plan or ISP for health and safety of the child.

(72) "Special Diet" means the specially prepared food or particular types of food that are specific to the medical condition or diagnosis of a child and in support of an evidence-based treatment regimen.

(73) "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.

(74) "Suspension" means an immediate temporary withdrawal of the approval to operate a child foster home after the certifying agency determines that the foster provider or the child foster home is not in compliance with one or more of these rules or there is a threat to the health, safety, or welfare of a child.

(75) "These Rules" mean the rules in OAR chapter 411, division 346.

(76) "Transfer" means movement of a child from one home to another home administered or operated by the same foster provider.

(77) "Unauthorized Absence" means any length of time when a child is absent from a foster home without prior approval as specified in the ISP for the child.

(78) "Unusual Incident" means any incident involving a child that includes serious illness or an accident, death, injury or illness requiring inpatient or emergency hospitalization, a suicide attempt, a fire requiring the services of a fire department, an act of physical aggression, or any incident requiring an abuse investigation.

(79) "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 a child.

(80) "Variance" means the temporary exemption from a regulation or provision of these rules that may be granted by the Department upon written application by the certifying agency.

(81) "Young Adult" means an individual age 18 through 21 who resides in a child foster home.

Stat. Auth.: ORS 409.050 & 443.835

Stats. Implemented: ORS 430.215, 443.830, 443.835

Hist.: MHD 15-2000(Temp), f. & cert. ef. 11-30-00 thru 5-28-01; MHD 3-2001, f. 5-25-01, cert. ef. 5-28-01; Renumbered from 309-046-0110, SPD 34-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 10-2007, f. 6-27-07, cert. ef. 7-5-07; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 7-2010, f. 6-29-10, cert. ef. 7-1-10; SDP 6-2011(Temp), f. & cert. ef. 2-10-11 thru 8-1-11; SPD 15-2011, f. & cert. ef. 7-1-11; SPD 27-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 62-2013, f. 12-27-13, cert. ef. 12-28-13; APD 28-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14

## 411-346-0150

### General Requirements for Certification

(1) An applicant or foster provider must participate in certification and certification renewal studies and in the ongoing monitoring of their home.

(2) An applicant or foster provider must give the information required by the Department to verify compliance with all applicable rules, including change of address and change of number of people in the household such as relatives, employees, or volunteers.

(3) An applicant seeking certification from the Department must complete the Department application forms. When two or more adults living in the home share foster provider responsibilities to any degree, each adult must be listed on the application as applicant and co-applicant.

(4) An applicant must disclose each state or territory the applicant has lived in the last five years and for a longer period if requested by the certifying agency. The disclosure must include the address, city, state, and zip code of previous residences.

(5) An applicant must provide the following information:

(a) Names and addresses of any agencies in the United States where any occupant of the home has been licensed or certified to provide care to children or adults and the status of such license or certification, such as licenses or certificates for residential care, nurse, nurse's aide, and foster care;

(b) Proposed number, gender, age range, disability, and support needs of children to be served in foster care;

(c) School reports for any child of school age living in the home at the time of initial application. School reports for any child of school age living in the home within the last year may also be required;

(d) Names and addresses of at least four people, three of whom are unrelated, who have known each applicant for two years or more and who can attest to the character of the applicant and the ability of the applicant to care for children. The Department may contact schools, employers, adult children, and other sources as references;

(e) Reports of all criminal charges, arrests, or convictions, including the date of offense and the resolution of those charges, for all employees or volunteers and people living in the home. If the minor children of the applicant are living in the home, the applicant must also list reports of all criminal or juvenile delinquency charges, arrests, or convictions, including the date of offense and the resolution of those charges;

(f) Founded reports of child abuse or substantiated abuse, including dates, locations, and resolutions of those reports, for all people living in the home, as well as all applicant or provider employees, independent contractors, and volunteers;

(g) Demonstration, upon initial certification, of successful completion of 15 hours of pre-service training.

(h) Demonstration, upon initial certification, of income sufficient to meet the needs and to ensure the stability and financial security of the family independent of the foster care payment;

(i) All child support obligations in any state, including whether the obligor is current with payments or in arrears, and whether any wages of the applicant or foster provider are being attached or garnished for any reason;

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(j) A statement from a physician, on a form provided by the Department, that each applicant is physically and mentally capable of providing care;

(k) A floor plan of the house showing the location of:

(A) Rooms, indicating the bedrooms for the child in foster care, caregiver, and other occupants of the home;

(B) Windows;

(C) Exit doors;

(D) Smoke alarms and fire extinguishers; and

(E) Wheel chair ramps, if applicable; and

(l) A diagram of the house and property showing safety devices for fire places, wood stoves, water features, outside structures, and fencing.

(6) Falsification or omission of any of the information for certification may be grounds for denial or revocation of the child foster home certification.

(7) Applicants must be at least 21 years of age. Applicants who are "Native American" as defined in the ICWA may be 18 years of age or older if a Native American child to be placed in the legal custody of DHS-CW.

(8) Applicants, foster providers, alternate caregivers, employees of foster providers, volunteers, other occupants in the foster home who are 18 years of age or older, other adults having regular contact in the foster home with a child in foster care, and any subject individual as defined in OAR 407-007-0210 must consent to a background check by the Department in accordance with 407-007-0200 to 407-007-0370 (Background Check Rules) and under ORS 181.534. The Department may require a background check on members of the household less than 18 years of age if there is reason to believe that a member of the household may pose a risk to a child placed in the home. All people subject to a background check are required to complete an Oregon background check and a national background check as described in OAR 407-007-0200 to 407-007-0370, including the use of fingerprint cards.

(a) Alternate caregivers, employees of foster providers, and volunteers may be approved to work in multiple homes within a county only when working in the same employment role at each home. The indication of worksite location must be included by a qualified entity initiator for each alternate caregiver, employee of the foster provider, or volunteer who intends to work at various child foster homes within the licensing jurisdiction of the county.

(b) Effective July 28, 2009, public funds may not be used to support, in whole or in part, a person described in section (8) of this rule in any capacity who has been convicted of any of the disqualifying crimes listed in OAR 407-007-0275.

(c) A person does not meet qualifications as described in this rule if the person has been convicted of any of the disqualifying crimes listed in OAR 407-007-0275.

(d) Section (8)(a) and (b) of this rule do not apply to employees hired prior to July 28, 2009 that remain in the current position for which the employee was hired.

(e) Any person as described in section (8) of this rule must self-report any potentially disqualifying condition as described in OAR 407-007-0280 and 407-007-0290. The person must notify the Department or the designee of the Department within 24 hours.

(9) The Department may not issue or renew a certificate if an applicant or member of the household:

(a) Has, after completing the background check, a fitness determination of "denied".

(b) Has, at any time, been convicted of a felony in Oregon or any jurisdiction that involves:

(A) Child abuse or neglect;

(B) Spousal abuse;

(C) Criminal activity against children, including child pornography;

or

(D) Rape, sexual assault, or homicide.

(c) Has, within the past five years from the date the background check was signed, been convicted of a felony in Oregon or any jurisdiction that involves:

(A) Physical assault or battery (other than against a spouse or child);

or

(B) Any drug-related offense.

(d) Has been found to have abused or neglected a child or adult as defined in ORS 419B.005 or as listed in OAR 407-045-0260.

(e) Has, within the past five years from the date the child foster home application was signed, been found to have abused or neglected a child or adult in the United States as defined by that jurisdiction or any other jurisdiction.

(10) An applicant or foster provider may request to withdraw an application any time during the certification process by notifying the certifying agency in writing. Written documentation by the certifying agency of oral notice may substitute for written notification.

(11) The Department may suspend or revoke a certificate or may not issue or renew a certificate for a minimum of five years, if an applicant is found to have a license or certificate to provide care to children or adults suspended, revoked, or not renewed by other than voluntary request.

(12) The Department may not issue or renew a certificate based on an evaluation of any negative references, school reports, statement of a physician, or previous licensing or certification reports from other agencies or states.

(13) A Department employee may be a foster provider, or an employee of an agency that contracts with the Department as a foster provider, if the position of the employee with the Department does not influence referral, regulation, or funding of such activities. Prior to engaging in such activity, the employee must obtain written approval from the Director of the Department. The written approval must be on file with the Director of the Department and in the certification file maintained by the Department.

(14) An application is incomplete and void unless all supporting materials are submitted to the Department within 90 days from the date of the application.

(15) An application may not be considered complete until all required information is received and verified by the Department. A decision to approve or deny certification is made by the Department within 60 days from the receipt of the completed application.

(16) Compliance with these rules is determined by the Department based on receipt of the completed application material, an investigation of information submitted, an inspection of the home, a completed home study, and a personal interview with the provider. A certificate issued on or after February 1, 2010 is valid for a maximum of two years unless revoked or suspended.

(17) The Department may attach conditions to a certificate that limit, restrict, or specify other criteria for operation of the child foster home.

(18) A condition may be attached to a certificate that limits a foster provider to the care of a specific child. A foster provider with this limitation does not receive referrals.

(19) A child foster home certificate is not transferable or applicable to any location or people other than those specified on the certificate.

(20) A foster provider who cares for a child funded by the Department must enter into a contract with the Department and follow the Department rules governing reimbursement for services and refunds.

(21) A foster provider may not be the parent or legal guardian of any child placed in their home for foster care services funded by the Department.

(22) If an applicant or foster provider intends to provide care for a child with significant medical needs, at least one provider or applicant must have the following:

(a) An equivalent of one year of full-time experience in providing direct care to individuals;

(b) Health care professional qualifications, such as a registered nurse (RN) or licensed practical nurse (LPN), or the equivalent of two additional years full-time experience providing care and support to an individual who has a medical condition that is serious and may be life-threatening;

(c) Copies of all current health related licenses or certificates and provide those documents to the certifying agent;

(d) Current certification in First Aid and Cardiopulmonary Resuscitation (CPR). The CPR training must be done by a recognized training agency and the CPR certificate must be appropriate to the ages of the child served in the foster home;

(e) Current satisfactory references from at least two medical professionals, such as a physician and registered nurse, who have direct knowledge of the ability of the applicant and past experiences as a caregiver. The medical professional references may serve as two of the four references in section (5)(d) of this rule; and

(f) Positive written recommendation from the Medically Fragile Children's Unit (MFCU) of the Department if the foster provider or applicant has provided services through the MFCU or if the foster provider or applicant has a child in the family home or foster home that has historically received services through the MFCU.

(23) A foster provider may not accept a child with significant medical needs unless an initial Nursing Service Plan for the child is in place at the time of placement that addresses the health and safety supports for the child.

Stat. Auth.: ORS 409.050 & 443.835

Stats. Implemented: ORS 430.215, 443.830, 443.835

# ADMINISTRATIVE RULES

Hist.: MHD 15-2000(Temp), f. & cert. ef. 11-30-00 thru 5-28-01; MHD 3-2001, f. 5-25-01, cert. ef. 5-28-01; Renumbered from 309-046-0150, SPD 34-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 10-2007, f. 6-27-07, cert. ef. 7-5-07; 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 7-2010, f. 6-29-10, cert. ef. 7-1-10; SDP 6-2011(Temp), f. & cert. ef. 2-10-11 thru 8-1-11; SPD 15-2011, f. & cert. ef. 7-1-11; SPD 62-2013, f. 12-27-13, cert. ef. 12-28-13; APD 28-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14

## 411-346-0180

### Professional Responsibilities of the Foster Provider

#### (1) TRAINING AND DEVELOPMENT.

(a) The foster provider must complete a minimum of 15 hours of pre-service training prior to certification and 10 hours annually for certification renewal. The Department or the certifying agency may require additional hours of training based on the needs of the child served in the home.

(b) The foster provider must participate in training provided or approved by the Department or the certifying agency. Such training must include educational opportunities designed to enhance the awareness, understanding, and skills of the foster provider to meet the special needs of a child placed in the home of the foster provider.

(c) The foster provider must complete mandatory reporter training prior to initial certification and annually thereafter.

(d) Mandatory reporter training must be appropriate to the ages of the individuals living in the child foster home.

(2) RELATIONSHIP WITH THE CHILD PLACING AGENCY. The foster provider must:

(a) Take part in planning, preparation, pre-placement activities, and visitation for the child placed in their home;

(b) Participate as team members in developing and implementing the ISP when initiated by the CDDP services coordinator for the child placed in their home;

(c) In advance or within one working day, notify the certifying agency of changes likely to affect the life and circumstances of the foster family or the safety in the home including, but not limited to, the following:

(A) Foster family illness;

(B) Divorce, legal separation, or loss of a household member;

(C) Significant change in financial circumstances;

(D) New household members or placement of a child in foster care by another agency, including relief care;

(E) Arrests or criminal involvement;

(F) The addition of hunting equipment and weapons;

(G) The addition of a swimming pool; or

(H) The addition of a pet.

(d) Immediately notify the CDDP services coordinator and guardian of an injury, illness, or accident of the child or any unusual incident or circumstance involving the child that may have a serious effect on the health, safety, physical, or emotional well-being of the child in foster care;

(e) Notify the guardian and CDDP staff of any unauthorized absence of a child in foster care within 12 hours or other mutually agreed upon time as determined by the ISP team;

(f) Sign and abide by the responsibilities described in the Child Foster Home Contract;

(g) Allow the certifying agency and child placing agency reasonable access to the child foster home and to the child placed in the care of the foster provider. Allow family members of the child reasonable access to the child foster home and the child when placement is voluntary. For the purpose of these rules, reasonable access means with advance notice unless there is cause for not giving such notice;

(h) Allow the Department or certifying agency staff access to:

(A) Investigate reports of abuse and violations of a regulation or provision of these rules;

(B) Inspect or examine the home, the records and accounts of a child, and the physical premises including the buildings, grounds, equipment, and any vehicles; and

(C) Interview the child, adult, or alternate caregivers.

(i) Participate in interviews conducted by the Department or the certifying agency; and

(j) Authorize substitute caregivers to permit entrance by the Department or the certifying agency for the purpose of inspection and investigation.

#### (3) ACCEPTING CHILDREN FOR CARE.

(a) Except as described in section (3)(c) of this rule, a certified provider may not exceed the following maximum number of children in the foster home including the biological children of the provider:

(A) A total of four children when one certified adult lives in the home;

or

(B) A total of seven children when two certified adults live in the home.

(b) All homes are limited to two children under the age of three.

(c) Any providers certified prior to July 1, 2007 with a capacity greater than the numbers listed in section (3)(a) of this rule must meet the standard through attrition as children move out of the foster home.

(d) At the time of referral, the foster provider must be given available information about the child including behavior, skill level, medical status, and other relevant information. The foster provider is obligated to decline the referral of any child based on the referral information, parameters of the certification of the child foster home, or if the provider feels his or her skill level may not safely or effectively support the child.

(e) A foster provider may provide relief care in the child foster home for a child upon approval by the certifying agency or the Department.

(f) A foster provider must obtain approval from the certifying agency prior to accepting a child for placement.

(g) A child who turns 18 may continue to reside in their current certified child foster home when the ISP team determines it is in the best interest of the child to remain in their current certified child foster home. When the ISP team determines a child who is turning 18 may remain in their current certified child foster home, the foster provider must:

(A) Submit a variance request to the Department in accordance with OAR 411-346-0210; and

(B) Submit to the Department and the certifying agency, a copy of the ISP addendum signed by the ISP team noting it is in the best interest of the child to remain in the current certified child foster home.

(h) Any variance to subsections (3)(a) through (3)(h) of this section must take into consideration the maximum safe physical capacity of the home including:

(A) Sleeping arrangements;

(B) The ratio of adults to children;

(C) The level of supervision available;

(D) The skill level of the foster provider;

(E) Individual plans for egress during fire;

(F) The needs of the other children in placement; and

(G) The desirability of keeping siblings placed together.

(i) The foster provider may not care for unrelated adults on a commercial basis in the child foster home or accept children for day care in the child foster home while currently certified as a foster provider.

(j) The foster provider must notify the Department prior to a voluntary closure of a child foster home and give the parent or guardian of the child and the CDDP 30 days written notice, except in circumstances where undue delay might jeopardize the health, safety, or well-being of the child or foster provider.

#### (4) INVOLUNTARY TRANSFERS AND EXITS.

(a) A foster provider must only transfer or exit a child involuntarily for one or more of the following reasons:

(A) The behavior of the child poses an imminent risk of danger to self or others;

(B) The child experiences a medical emergency;

(C) The service needs of the child exceed the ability of the foster provider;

(D) Failure to pay for services; or

(E) The certification for the child foster home is suspended, revoked, not renewed, or voluntarily surrendered.

(b) NOTICE OF INVOLUNTARY EXIT. A foster provider must not transfer or exit a child involuntarily without 30 days advance written notice to the parent or guardian of the child and the CDDP services coordinator, except in the case of a medical emergency or when a child 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 Transfer or Exit form approved by the Department and include:

(i) The reason for the transfer or exit; and

(ii) The right to a hearing as described in subsection (e) of this section.

(B) A notice is not required when the parent or guardian of a child requests a transfer or exit.

(c) A foster provider may give less than 30 days advanced written notice only in a medical emergency or when a child is engaging in behavior that poses an imminent danger to self or others in the home. The notice must be provided to the parent or guardian of the child and CDDP services coordinator immediately upon determination of the need for a transfer or exit.

# ADMINISTRATIVE RULES

(d) A foster provider is responsible for the provision of services until a child exits the home.

(e) **HEARING RIGHTS.** A child and the parent or guardian of a child must be given the opportunity for a hearing under ORS chapter 183 to dispute an involuntary transfer or exit as described in OAR 411-318-0030. If a child or the parent or guardian of a child requests a hearing, the child must receive the same services until the hearing is resolved. When a child has been given less than 30 days advanced written notice of a transfer or exit as described in subsection (c) of this section and the child or the parent or guardian of the child has requested a hearing, the foster provider must reserve the room of the child until receipt of the final order.

(5) **RELATIONSHIP WITH THE FAMILY OF A CHILD.** In accordance with the ISP for a child and the guardian of the child, the foster provider must:

(a) Support the relationship of the child with family members, including siblings;

(b) Assist the CDDP staff and the guardian in planning visits with the child and the family members of the child; and

(c) Provide the child reasonable opportunities to communicate with his or her family members.

(6) **CONFIDENTIALITY.**

(a) The foster provider and the family of the foster provider must treat personal information about a child or the family of a child in a confidential manner. Confidential information is to be disclosed on a need to know basis to law enforcement, certifying agency staff, CDDP staff, DHS-CW child protective services staff, DHS-CW case workers, and medical professionals who are treating or providing services to the child. The information shared must be limited to the health, safety, and service needs of the child.

(b) In addition to the requirements in subsection (6)(a) of this section, the foster provider and the family of the foster provider must comply with the provisions of ORS 192.518 to 192.523 and therefore may use or disclose the protected health information of a child only:

(A) To law enforcement, certifying agency staff, CDDP staff, and DHS-CW staff;

(B) As authorized by the personal representative or guardian of the child appointed under ORS 125.305, 419B.370, 419C.481, or 419C.555;

(C) For purposes of obtaining health care treatment for the child;

(D) For purposes of obtaining payment for health care treatment; or

(E) As permitted or required by state or federal law or by order of a court.

(c) The foster provider must keep all written records for each child in a manner that ensures their confidentiality.

(7) **MANDATORY REPORTING.**

(a) The foster provider and the employees and volunteers of the foster provider are mandatory reporters of suspected abuse of any child as defined by ORS 419B.005. Upon reasonable cause to believe that abuse has occurred, all adult members of the household and any foster provider, employees, independent contractors, or volunteers must report pertinent information to DHS-CW or law enforcement.

(b) When the certified child foster provider, employees of the foster provider, independent contractors, or volunteers are providing services to an individual 18 years or older and have reason to believe abuse as defined in OAR 407-045-0260 has occurred, the foster provider, employees of the foster provider, independent contractors, or volunteers must report the pertinent information to the CDDP or law enforcement in accordance with ORS 430.737.

(c) Any protective physical intervention that results in an injury to the child, as defined in ORS 419B.005, must be reported to DHS-CW and the CDDP services coordinator by the foster provider. Same day oral notification is required.

Stat. Auth.: ORS 409.050 & 443.835

Stats. Implemented: ORS 430.215, 443.830, 443.835

Hist.: MHD 15-2000(Temp), f. & cert. ef. 11-30-00 thru 5-28-01; MHD 3-2001, f. 5-25-01, cert. ef. 5-28-01; Renumbered from 309-046-0180, SPD 34-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 10-2007, f. 6-27-07, cert. ef. 7-5-07; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 7-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 27-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 62-2013, f. 12-27-13, cert. ef. 12-28-13; APD 28-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14

## 411-346-0190

### Standards and Practices for Care and Services

(1) The foster provider must:

(a) Provide structure and daily activities designed to promote the physical, social, intellectual, cultural, spiritual, and emotional development of the child in the child foster home;

(b) Provide playthings and activities in the foster home, including games, recreational and educational materials, and books, appropriate to the chronological age, culture, and developmental level of the child;

(c) In accordance with the ISP and as defined in the DHS-CW case plan (if applicable), encourage the child to participate in community activities with family, friends, and on his or her own when appropriate;

(d) Promote the independence and self-sufficiency of the child by encouraging and assisting the child to develop new skills and perform age-appropriate tasks;

(e) In accordance with the ISP and as defined in the DHS-CW case plan (if applicable), ask the child in foster care to participate in household chores appropriate to the age and ability of the child that are commensurate with household chores expected of the children of the foster provider;

(f) Provide the child with reasonable access to a telephone and to writing materials;

(g) In accordance with the ISP and as defined in the DHS-CW Case Plan (if applicable), permit and encourage the child to have visits with family and friends;

(h) Allow regular contacts and private visits or phone calls with the CDDP services coordinator and the DHS-CW case worker (if applicable); and

(i) Not allow a child in foster care to baby-sit in the child foster home or elsewhere without permission of the CDDP services coordinator and the guardian.

(2) **RELIGIOUS, ETHNIC, AND CULTURAL HERITAGE.**

(a) The foster provider must recognize, encourage, and support the religious beliefs, ethnic heritage, cultural identity, and language of a child and the family of a child.

(b) In accordance with the ISP and the preferences of the guardian of the child, the foster provider must participate with the ISP team to arrange transportation and appropriate supervision during religious services or ethnic events for a child whose beliefs and practices are different from those of the foster provider.

(c) The foster provider may not require a child to participate in religious activities or ethnic events contrary to the beliefs of the child.

(3) **PUBLIC EDUCATION.** The foster provider:

(a) Must enroll each child of school age in public school within five school days of the placement and arrange for transportation;

(b) Must comply with any Alternative Educational Plan described in the IEP for the child;

(c) Must be actively involved in the school program for the child and must participate in the development of the IEP. The foster provider may apply to be the educational surrogate of the child if requested by the parent or guardian of the child;

(d) Must consult with school personnel when there are issues with the child in school and report to the guardian and CDDP services coordinator any serious situations that may require Department involvement;

(e) Must support the child in his or her school or educational placement;

(f) Must assure the child regularly attends school or educational placement and monitor the educational progress of the child; and

(g) May sign consent to the following school related activities:

(A) School field trips within the state of Oregon;

(B) Routine social events;

(C) Sporting events;

(D) Cultural events; and

(E) School pictures for personal use only unless prohibited by the court or legal guardian.

(4) **ALTERNATE CAREGIVERS.**

(a) The foster provider must arrange for safe and responsible alternate care.

(b) A child care plan for a child in foster care must be approved by the Department, the CDDP, or DHS-CW before it is implemented. When a child is cared for by a child care provider or child care center, the provider or center must be certified as required by the State Child Care Division (ORS 657A.280) or be a certified foster provider.

(c) The foster provider must have a Relief Care Plan approved by the certifying agency or the Department when using alternate caregivers.

(d) The foster provider must assure the alternate caregivers, consultants, and volunteers are:

(A) 18 years of age or older;

(B) Capable of assuming foster care responsibilities;

(C) Present in the home;

(D) Physically and mentally capable to perform the duties of the foster provider as described in these rules;

# ADMINISTRATIVE RULES

(E) Cleared by a background check as described in OAR 411-346-0150, including a DHS-CW background check;

(F) Able to communicate with the child, individuals, agencies providing care to the child, the CDDP services coordinator, and appropriate others;

(G) Trained on fire safety and emergency procedures;

(H) Trained on the ISP, BSP, and any related protocols for the child;

(I) Able to provide the care needed for the child;

(J) Trained on the required documentation for health, safety, and behavioral needs of the child;

(K) A licensed driver and vehicle insurance in compliance with the Oregon DMV laws when transporting children by motorized vehicle;

(L) Not be a person who requires care in a foster care or group home; and

(M) Not be the parent or guardian of the child.

(e) When the foster provider uses an alternate caregiver and the child is staying at the home of the alternate caregiver, the foster provider must assure the home of the alternate caregiver meets the necessary health, safety, and environmental needs of the child.

(f) When the foster provider arranges for social activities of the child for less than 24 hours, including an overnight arrangement, the foster provider must assure that the person is responsible and capable of assuming child care responsibilities and is present at all times. The foster provider still maintains primary responsibility for the child.

## (5) FOOD AND NUTRITION.

(a) The foster provider must offer three nutritious meals daily at times consistent with those in the community.

(A) Daily meals must include food from the four basic food groups, including fresh fruits and vegetables in season, unless otherwise specified in writing by a licensed medical professional or qualified health care provider.

(B) There must be no more than a 14-hour span between the evening meal and breakfast unless snacks and liquids are served as supplements.

(C) Consideration must be given to cultural and ethnic background in food preparation.

(b) Any home canned food used must be processed according to the guidelines of Oregon State University extension services (<http://extension.oregonstate.edu/fch/food-preservation>).

(c) All food items must be used prior to the expiration date.

(d) The foster provider must implement special diets only as prescribed in writing by a licensed medical professional or qualified health care provider.

(e) The foster provider must prepare and serve meals in the foster home where the child lives. Payment for meals eaten away from the foster home (e.g. restaurants) for the convenience of the foster provider is the responsibility of the foster provider.

(f) When serving milk, the foster provider must only use pasteurized liquid or powdered milk for consumption by a child in foster care.

(g) A child who must be bottle-fed and cannot hold the bottle, or is 11 months or younger, must be held during bottle-feeding.

## (6) CLOTHING AND PERSONAL BELONGINGS.

(a) The foster provider must assure that each child has his or her own clean, well-fitting, seasonal clothing appropriate to age, gender, culture, individual needs, and comparable to the community standards.

(b) A school-age child must participate in choosing his or her own clothing whenever possible.

(c) The foster provider must allow a child to bring and acquire appropriate personal belongings.

(d) The foster provider must assure that when a child leaves the child foster home the belongings of the child, including all personal funds, medications, and personal items, remain with the child. This includes all items brought with the child and obtained while living in the child foster home.

## (7) BEHAVIOR SUPPORT AND DISCIPLINE PRACTICES.

(a) The foster provider must teach and discipline a child with respect, kindness, and understanding, using positive behavioral theory and practice. Unacceptable practices include, but are not limited to:

(A) Physical force, spanking, or threat of physical force inflicted in any manner upon the child;

(B) Verbal abuse, including derogatory remarks about the child or the family of the child that undermine the self-respect of the child;

(C) Denial of food, clothing, or shelter;

(D) Denial of visits or contacts with family members, except when otherwise indicated in the ISP or the DHS-CW case plan (if applicable);

(E) Assignment of extremely strenuous exercise or work;

(F) Threatened or unauthorized use of protective physical intervention;

(G) Threatened or unauthorized use of mechanical restraints;

(H) Punishment for bed-wetting or punishment related to toilet training;

(I) Delegating or permitting punishment of a child by another child;

(J) Threat of removal from the child foster home as a punishment;

(K) Use of shower or aversive stimuli as punishment; and

(L) Group discipline for misbehavior of one child.

(b) The foster provider must set clear expectations, limits, and consequences of behavior in a non-punitive manner.

(c) If time-out separation from others is used to manage behavior, time-out must be included on the ISP for the child and the foster provider must provide time-out in an unlocked, lighted, well-ventilated room of at least 50 square feet.

(A) The ISP must include whether the child needs to be within hearing distance or within sight of an adult during the time-out.

(B) The time limit must take into consideration the chronological age, emotional condition, and developmental level of the child.

(C) Time-out is to be used for short duration and frequency as approved by the ISP team.

(d) No child in foster care or other child in a child foster home is to be subjected to physical abuse, sexual abuse, sexual exploitation, neglect, emotional abuse, mental injury, or threats of harm as defined in ORS 419B.005 and OAR 407-045-0260.

(e) BEHAVIOR SUPPORT PLAN (BSP). For a child who has demonstrated a serious threat to self, others, or property and for whom it has been decided a BSP is needed, the BSP must be developed with the approval of the ISP team.

(f) PROTECTIVE PHYSICAL INTERVENTION. A protective physical intervention must be used only for health and safety reasons and under the following conditions:

(A) As part of the ISP team approved BSP.

(i) When protective physical intervention is employed as part of the BSP, the foster provider and alternate caregivers must complete OIS training prior to the implementation of the BSP.

(ii) The use of any modified OIS protective physical intervention must have written approval from the OIS Steering Committee prior to implementation. Documentation of the approval of the OIS Steering Committee must be maintained in the records for the child.

(B) As in a health-related protection prescribed by a physician or qualified health care provider, but only if absolutely necessary during the conduct of a specific medical or surgical procedure, or only if absolutely necessary for protection during the time that a medical condition exists.

(C) As an emergency measure if absolutely necessary to protect the child or others from immediate injury and only until the child is no longer an immediate threat to self or others.

(g) MECHANICAL RESTRAINT.

(A) The foster provider may not use mechanical restraints on a child in foster care other than car seat belts or normally acceptable infant safety products unless ordered by a physician or health care provider and with the agreement of the ISP team.

(B) The foster provider must maintain the original order of the physician or health care provider in the records for the child and forward a copy to the CDDP services coordinator and guardian.

(h) DOCUMENTATION AND NOTIFICATION OF USE OF PROTECTIVE PHYSICAL INTERVENTION.

(A) The foster provider must document the use of all protective physical interventions or mechanical restraints in an incident report. A copy of the incident report must be provided to the CDDP services coordinator and guardian.

(B) If an approved protective physical intervention is used, the foster provider must send a copy of the incident report within five working days to the CDDP services coordinator and guardian.

(C) If an emergency or non ISP team approved protective physical intervention is used, the foster provider must send a copy of the incident report within 24 hours to the CDDP services coordinator and guardian. The foster provider must make oral notification to the CDDP services coordinator and guardian no later than the next working day.

(D) The original incident report must be on file with the foster provider in the records for the child.

(E) The incident report must include:

(i) The name of the child to whom the protective physical intervention was applied;

## ADMINISTRATIVE RULES

(ii) The date, location, type, and duration of entire incident and protective physical intervention;

(iii) The name of the provider and witnesses or people involved in applying the protective physical intervention;

(iv) The name and position of the person notified regarding the use of the protective physical intervention; and

(v) A description of the incident, including precipitating factors, preventive techniques applied, description of the environment, description of any physical injury resulting from the incident, and follow-up recommendations.

(8) **MEDICAL AND DENTAL CARE.** The foster provider must:

(a) Provide care and services as appropriate to the chronological age, developmental level, and condition of the child, and as identified in the ISP;

(b) Assure that the orders of a physician, qualified health care provider, or other licensed medical professional are implemented as written;

(c) Inform the physicians or qualified health care providers of current medications and changes in health status and if the child refuses care, treatments, or medications;

(d) Inform the guardian and CDDP services coordinator of any changes in the health status of the child except as otherwise indicated in the DHS-CW Permanent Foster Care contract agreement and as agreed upon in the ISP;

(e) Obtain the necessary medical, dental, therapies, and other treatments of care including, but not limited to:

(A) Making appointments;

(B) Arranging for or providing transportation to appointments; and

(C) Obtaining emergency medical care.

(f) Have prior consent from the guardian of the child for medical treatment that is not routine, including surgery and anesthesia, except in cases where a DHS-CW Permanent Foster Care contract agreement exists;

(g) Keep current medical records. The records must include when applicable:

(A) Any history of physical, emotional, and medical problems, illnesses, and mental health status;

(B) Current orders for all medications, treatments, therapies, use of protective physical intervention, special diets, adaptive equipment, and any known food or medication allergies;

(C) Completed medication administration record (MAR) from previous months;

(D) Pertinent medical and behavioral information, such as hospitalizations, accidents, immunization records, including Hepatitis B status and previous TB tests, and incidents or injuries affecting the health, safety, or emotional well-being of the child;

(E) Documentation or other notations of guardian consent for medical treatment that is not routine including surgery and anesthesia;

(F) Record of medical appointments;

(G) Medical appointment follow-up reports provided to the foster provider; and

(H) Copies of previous mental health assessments, assessment updates including multi-axial DSM diagnosis and treatment recommendations, and progress records from mental health treatment services.

(h) Provide, when requested, copies of medical records and medication administration records to the legal guardian of the child, CDDP services coordinator, and DHS-CW caseworker; and

(i) Provide copies, as applicable, of the medical records described in subsection (8)(g)(H) of this section to a licensed medical professional prior to a medical appointment or no later than the time of the appointment with the licensed medical professional.

(9) **MEDICATIONS AND PHYSICIAN OR QUALIFIED HEALTH CARE PROVIDER ORDERS.**

(a) There must be authorization by a physician or qualified health care provider in the file for the child prior to the usage of, or implementation of, any of the following:

(A) All prescription medications;

(B) Nonprescription medications except over the counter topicals;

(C) Treatments other than basic first aid;

(D) Therapies and use of mechanical restraint as a health and safety related protection;

(E) Modified or special diets;

(F) Prescribed adaptive equipment; and

(G) Aids to physical functioning.

(b) The foster provider must have:

(A) A copy of the authorization in the format of a written order signed by a physician or a qualified health care provider; or

(B) Documentation of a telephone order by a physician or qualified health care provider with changes clearly documented on the MAR, including the name of the person giving the order, the date and time, and the name of the person receiving the telephone order; or

(C) A current prescription or label from the manufacturer as specified by the order of a physician on file with the pharmacy.

(c) A provider or alternate caregiver must carry out orders as prescribed by a physician or a qualified health care provider. Changes may not be made without the authorization of a physician or a qualified health care provider.

(d) Each medication for a child, including refrigerated medication, must be clearly labeled with the label of the pharmacist or in the originally labeled container from the manufacturer and kept in a locked location or stored in a manner that prevents access by children.

(e) Unused, outdated, or recalled medications may not be kept in the child foster home and must be disposed of in a manner that prevents illegal diversion into the possession of people other than for which the medication was prescribed.

(f) The foster provider must keep a MAR for each child. The MAR must be kept for all medications administered by the foster provider or alternate caregiver to that child, including over the counter medications and medications ordered by physicians or qualified health care providers and administered as needed (PRN) for the child.

(g) The MAR must include:

(A) The name of the child in foster care;

(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) A transcription of the printed instructions from the package for topical medications and treatments without an order from a physician or licensed health care provider;

(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 medication was administered;

(H) Documented effectiveness of any PRN medication administration;

(I) An explanation of all medication administration or documentation irregularities; and

(J) Any known allergy or adverse drug reactions and procedures that maintain and protect the physical health of the child placed in the foster home.

(h) Any errors in the MAR must be corrected by circling the error and then writing on the back of the MAR what the error was and why.

(i) Treatments, medication, therapies, and special diets must be documented on the MAR when not used or applied according to the order of a physician or licensed health care provider.

(j) **SELF-ADMINISTRATION OF MEDICATION.** For any child who is self-administering medication, the foster provider must:

(A) Have documentation that a training program was initiated with approval of the ISP team or that training for the child was unnecessary;

(B) Have a training program that provides for retraining when there is a change in dosage, medication, and time of delivery;

(C) Provide for an annual review, at a minimum as part of the ISP process, upon completion of the training program;

(D) Assure that the child is able to handle his or her own medication regime;

(E) Keep medications stored in a locked area inaccessible to others; and

(F) Maintain written documentation of all training in the medical record for the child.

(k) The foster provider 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.

(l) Any medication that is used with the intent to alter the behavior of a child must be documented in the ISP for the child.

(m) **BALANCING TEST.** When a psychotropic medication is first prescribed and annually thereafter, the foster provider must obtain a signed balancing test from the prescribing health care provider using the Balancing Test Form from the Department. Foster providers must present the physician or health care provider with a full and clear description of the behavior and symptoms to be addressed as well as any side effects observed.

(n) PRN prescribed psychotropic medication is prohibited.

## ADMINISTRATIVE RULES

(o) A mental health assessment by a qualified mental health professional or licensed medical professional must be completed, except as noted in subparagraph (A) of this subsection, prior to the administration of a new medication for more than one psychotropic or any antipsychotic medication to a child in foster care.

(A) A mental health assessment is not required in the following situations:

- (i) In a case of urgent medical need;
- (ii) For a substitution of a current medication within the same class;

or

- (iii) A medication order given prior to a medical procedure.

(B) When a mental health assessment is required, the foster provider:

(i) Must notify the DHS-CW caseworker when the child is in legal custody of DHS-CW; or

(ii) Must arrange for a mental health assessment when the child is a voluntary care placement.

(C) The mental health assessment:

(i) Must have been completed within three months prior to the prescription; or

(ii) May be an update of a prior mental health assessment that focuses on a new or acute problem.

(D) Whenever possible, information from the mental health assessment must be communicated to the licensed medical professional prior to the issuance of a prescription for psychotropic medication.

(p) Within one business day after receiving a new prescription or knowledge of a new prescription for psychotropic medication for the child in foster care, the foster provider must notify:

(A) The CDDP services coordinator; and

(B) The parent of the child when the parent retains legal guardianship or the person who has legal guardianship; or

(C) DHS-CW when DHS-CW is the legal guardian of the child.

(q) The notification from the foster provider to the parent or guardian and the CDDP services coordinator must contain:

(A) The name of the prescribing physician or qualified health care provider;

(B) The name of the medication;

(C) The dosage, any change of dosage, suspension, or discontinuation of the current psychotropic medication;

(D) The dosage administration schedule prescribed; and

(E) The reason the medication was prescribed.

(r) The foster provider must get a written informed consent prior to filling a prescription for any new psychotropic medication except in a case of urgent medical need from DHS-CW when DHS-CW is the legal guardian.

(s) The foster provider must cooperate as requested, when a review of psychotropic medications is indicated.

(10) DIRECT NURSING SERVICES. When direct nursing services are provided to a child, the foster 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 child; and

(b) Implement the Nursing Service Plan, or appropriate portions therein, as agreed upon by the ISP team and the 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 foster provider or alternate caregiver;

(E) Teaching and education of the foster provider and identifying supports that minimize health risks while promoting the autonomy of a child and self-management of healthcare; and

(F) 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) 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 a child, the foster 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 child; 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 comply with:

(A) Provider record and documentation requirements referenced in OAR 407-120-0100 -1505 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) DELEGATION AND SUPERVISION OF NURSING TASKS.

Nursing tasks must be delegated by a registered nurse to a foster provider or alternate caregiver in accordance with the rules of the Oregon State Board of Nursing in OAR chapter 851, division 047.

(a) The delegation process includes:

(A) Assessing a child in a specific situation;

(B) Evaluating the ability of the foster provider or alternate caregiver to perform the nursing task;

(C) Teaching the nursing task;

(D) Ensuring supervision of the foster provider or alternate caregiver; and

(E) Re-evaluating the nursing task at regular intervals.

(b) The foster provider or substitute caregiver performs nursing tasks under the delegated authority of a registered nurse.

(13) CHILD RECORDS.

(a) GENERAL INFORMATION OR SUMMARY RECORD. The provider must maintain a record for each child in the home. The record must include:

(A) The name, date of entry into the foster home, date of birth, gender, religious preference, and guardianship status of the child;

(B) The names, addresses, and telephone numbers of the guardian, family, or other significant person of the child;

(C) The name, address, and telephone number of the preferred primary health care provider, designated back up health care provider and clinic, dentist, preferred hospital, medical card number and any private insurance information, and Oregon Health Plan choice of the child;

(D) The name, address, and telephone number of the school program for the child; and

(E) The name, address, and telephone number of the CDDP services coordinator and representatives of other agencies providing services to the child.

(b) EMERGENCY INFORMATION. The foster provider must maintain emergency information for each child receiving foster care services in the child foster home. The emergency information must be kept current and must include:

(A) The name of the child;

(B) The address and telephone number of the child;

(C) The physical description of the child, which may include a picture and the date it was taken, and identification of:

(i) The race, gender, height, weight range, hair, and eye color of the child; and

(ii) Any other identifying characteristics that may assist in identifying the child if the need arises, such as marks or scars, tattoos, or body piercing.

(D) Information on the abilities and characteristics of the child including:

(i) How the child communicates;

(ii) The language the child uses or understands;

(iii) The ability of the child to know how to take care of bodily functions; and

(iv) Any additional information that may assist a person not familiar with the child to understand what the child may do for him or herself.

(E) The health support needs of the child including:

(i) Diagnosis;

(ii) Allergies or adverse drug reactions;

(iii) Health issues that a person needs to know when taking care of the child;

(iv) Special dietary or nutritional needs such as requirements around textures or consistency of foods and fluids;

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(v) Food or fluid limitations due to allergies, diagnosis, or medications the child is taking that may be an aspiration risk or other risk for the child;

(vi) Additional special requirements the child has related to eating or drinking such as special positional needs or a specific way foods or fluids are given to the child;

(vii) Physical limitations that may affect the ability of the child to communicate, respond to instructions, or follow directions;

(viii) Specialized equipment needed for mobility, positioning, or other health related needs;

(ix) The emotional and behavioral support needs of the child including:

(I) Mental health or behavioral diagnosis and the behaviors displayed by the child; and

(II) Approaches to use when supporting the child to minimize emotional and physical outbursts.

(x) Any court ordered or guardian authorized contacts or limitations;

(xi) The supervision requirements of the child and why; and

(xii) Any additional pertinent information the provider has that may assist in the care and support of the child if a natural or man-made disaster occurs.

(c) EMERGENCY PLANNING. The foster provider must post emergency telephone numbers in close proximity to all phones utilized by the foster provider or alternate caregivers. The posted emergency telephone numbers must include:

(A) Telephone numbers of the local fire, police department, and ambulance service if not served by a 911 emergency services; and

(B) The telephone number of any emergency physician and additional people to be contacted in the case of an emergency.

(d) WRITTEN EMERGENCY PLAN.

(A) Foster providers must develop, maintain, update, and implement a written Emergency Plan for the protection of all children in foster care in the event of an emergency or disaster. The Emergency Plan must:

(i) Be practiced at least annually. The Emergency Plan practice may consist of a walk-through of the responsibilities of the foster provider and alternative caregiver.

(ii) Consider the needs of the child and address all natural and human-caused events identified as a significant risk for the child foster home such as a pandemic or an earthquake.

(iii) Include provisions and sufficient supplies, such as sanitation and food supplies, to shelter in place when unable to relocate for a minimum of three days under the following conditions:

(I) Extended utility outage;

(II) No running water;

(III) Inability to replace food supplies; and

(IV) An alternate caregiver is unable to provide relief care or additional support and care.

(iv) Include provisions for evacuation and relocation that identifies:

(I) The duties of the alternate caregivers during evacuation, transporting, and housing of the child, including instructions to notify the parent or legal guardian of the child, the Department or the designee of the Department, the CDDP services coordinator, and DHS-CW as applicable, of the plan to evacuate or the evacuation of the child foster home 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 child;

(IV) A method that provides people unknown to the child the ability to identify each child by the name of the child and to identify the name of the supporting provider for the child; and

(V) A method for tracking and reporting to the Department or the designee of the Department and the local CDDP, the physical location of each child in foster care until a different entity resumes responsibility for the child.

(v) Address the needs of the child including provisions to provide:

(I) Immediate and continued access to medical treatment, information necessary to obtain care, treatment, food, and fluids for the child during and after an evacuation and relocation;

(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) The supports needed to meet the life-sustaining and safety needs of the child.

(B) The foster provider must provide and document all training to alternate caregivers regarding the responsibilities of the alternate caregiver for implementing the Emergency Plan.

(C) The foster provider must re-evaluate and revise the Emergency Plan at least annually or when there is a significant change in the child foster home.

(D) The foster provider must complete the Emergency Plan Summary, on the form supplied by the Department, and must send the Emergency Plan Summary to the Department annually and upon change of foster provider or location of the child foster home.

(e) INDIVIDUAL SUPPORT PLAN (ISP). Within 60 days of placement, the ISP for a child must be prepared and updated at least annually.

(A) If requested by the child or guardian, the foster provider must participate with the ISP team in the development and implementation of the ISP to address the behavior, medical, social, financial, safety, and other support needs of the child.

(B) Prior to, or upon entry to, or exit from the child foster home, the foster provider must participate in the development and implementation of a Transition Plan for the child.

(i) The Transition Plan must include a summary of the services necessary to facilitate the adjustment of the child to the child foster home or after care plan; and

(ii) Identify the supports necessary to ensure the health, safety, and any assessments and consultations needed for ISP development.

(f) FINANCIAL RECORDS.

(A) The foster provider must maintain a separate financial record for each child. Errors must be corrected with a single strike through and initialed by the person making the correction. The financial record must include:

(i) The date, amount, and source of all income received on behalf of the child;

(ii) The room and board fee that is paid to the foster provider at the beginning of each month;

(iii) The date, amount, and purpose of funds disbursed on behalf of the child; and

(iv) The signature of the person making the entry.

(B) Any single transaction over \$25 purchased with the personal funds of the child, unless otherwise indicated in the ISP for the child, must be documented in the financial record for the child and include the receipt.

(C) The ISP team may address how the personal spending money of a child is managed.

(D) If the child has a separate commercial bank account, records from the account must be maintained with the financial record for the child.

(E) The personal funds of a child must be maintained in a safe manner and separate from the funds of other members of the household.

(F) Misuse of funds may be cause for suspension, revocation, or denial of renewal of the child foster home certificate.

(g) PERSONAL PROPERTY RECORD.

(A) The foster provider must maintain a written record of the property of a child of monetary value of more than \$25 or that has significant personal value to the child, parent, or guardian, or as determined by the ISP team. Errors must be corrected with a single strike through and initialed by the person making the correction.

(B) Personal property records are not required for children who have a court approved Permanent Foster Care contract agreement unless requested by the guardian of the child.

(C) The personal property record must include:

(i) The description and identifying number, if any;

(ii) The date when the child brought in the personal property or made a new purchase;

(iii) The date and reason for the removal from the record; and

(iv) The signature of the person making the entry.

(h) EDUCATIONAL RECORDS. The foster provider must maintain the following educational records when available:

(A) The report cards for the child;

(B) Any reports received from the teacher or the school;

(C) Any evaluations received as a result of educational testing or assessment; and

(D) Disciplinary reports regarding the child.

(i) Child records must be available to representatives of the Department, the certifying agency, and DHS-CW conducting inspections or investigations, as well as to the child, if appropriate, and the guardian or other legally authorized people.

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(j) Child records must be kept for a period of three years. If a child moves or the foster home closes, copies of pertinent information must be transferred to the new home of the child.

Stat. Auth.: ORS 409.050 & 443.835

Stats. Implemented: ORS 430.215, 443.830, 443.835

Hist.: MHD 15-2000(Temp), f. & cert. ef. 11-30-00 thru 5-28-01; MHD 3-2001, f. 5-25-01, cert. ef. 5-28-01; Renumbered from 309-046-0190, SPD 34-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 10-2007, f. 6-27-07, cert. ef. 7-5-07; SPD 7-2010, f. 6-29-10, cert. ef. 7-1-10; SDP 6-2011(Temp), f. & cert. ef. 2-10-11 thru 8-1-11; SPD 15-2011, f. & cert. ef. 7-1-11; SPD 62-2013, f. 12-27-13, cert. ef. 12-28-13; APD 28-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14

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**Rule Caption:** Foster Homes for Adults with Intellectual or Developmental Disabilities

**Adm. Order No.:** APD 29-2014(Temp)

**Filed with Sec. of State:** 7-1-2014

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**Notice Publication Date:**

**Rules Amended:** 411-360-0020, 411-360-0140, 411-360-0170, 411-360-0190, 411-360-0250, 411-360-0275

**Subject:** The Department of Human Services (Department) is immediately updating the rules in OAR chapter 411, division 360 for adult foster homes for individuals with intellectual or developmental disabilities (AFH-DD).

- OAR 411-360-0020 is being amended to incorporate the general definitions in 411-317-0000, update existing definitions to reflect correct terminology, and include definitions for administrator review, Career Development Plan, community nursing services, and OHP Plus;

- OAR 411-360-0140 is being amended to clarify nursing services to provide consistency with the rules for community nursing services in OAR chapter 411, division 048;

- OAR 411-360-0170 is being amended to incorporate the requirement for individuals of working age to have a Career Development Plan attached to their Individual Support Plan, replace references to alternatives to employment services with day support activities to align with waiver and state plan requirements, and incorporate the rights of individuals adopted in 411-318-0010;

- OAR 411-360-0190 is being amended to update the Medicaid eligibility criteria, remove crisis eligibility requirements, incorporate service eligibility requirements related to the transfer of assets in accordance with OAR 461-140-0210 to 461-140-0300, offer appropriate placement setting options upon a transfer as described in 411-320-0110 and ORS 427.121, and implement House Bill 4151 which provides the ability for an AFH-DD provider to immediately exit an individual on parole, probation, or post-release supervision after being convicted of a sex crime; and

- OAR 411-360-0250 and OAR 411-360-0275 is being amended to clarify the administrator review process in instances when the Department attaches a condition to an AFH-DD license or suspends an AFH-DD license.

**Rules Coordinator:** Kimberly Colkitt-Hallman—(503) 945-6398

## 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) "Abuse" means:

- (a) Abuse of a child as defined in ORS 419B.005; and
- (b) Abuse of an adult as defined in OAR 407-045-0260.

(2) "Abuse Investigation and Protective Services" 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.

(3) "Administrator Review" means the Director of the Department reviews a decision upon request, including the documentation related to the decision, and issues a determination.

(4) "Adult" means an individual 18 years or older with an intellectual or developmental disability.

(5) "Adult Foster Home (AFH)" means any family home or facility 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.

(6) "Adult Foster Home for Individuals with Intellectual or Developmental Disabilities (AFH-DD)" means an adult foster home licensed by the Department to provide residential care and services to support individuals with intellectual or developmental disabilities.

(7) "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).

(8) "Advocate" means a person other than a paid caregiver who has been selected by an individual or the legal representative of the 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.

(9) "AFH" means "adult foster home" as defined in this rule.

(10) "AFH-DD" means an "adult foster home for individuals with intellectual or developmental disabilities" as defined in this rule.

(11) "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.

(12) "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).

(13) "Background Check" means a criminal records check and abuse check as defined in OAR 407-007-0210 (Criminal Records and Abuse Check for Providers).

(14) "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.

(15) "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, such as bathing, dressing, grooming, eating, money management, transportation, socialization, recreation, and medication management; and

(c) Monitoring the activities of the individual to ensure the health, safety, and welfare of the individual.

(16) "Career Development Plan" means the part of an ISP that identifies the employment goals and objectives for an individual, the services and supports needed to achieve those goals, the people, agencies, and providers assigned to assist the individual to attain those goals, the obstacles to the individual working in an individualized job in an integrated employment setting, and the services and supports necessary to overcome those obstacles.

(17) "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.

(18) "Case Management" means an organized service to assist individuals to select, obtain, and utilize resources and services.

(19) "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) and overseeing Medicaid programs administered by the states through survey and certification.

(20) "CDDP" means "Community Developmental Disability Program" as defined in OAR 411-320-0020.

(21) "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.

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(22) "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, service providers, services, and service settings. Personal outcomes, goals, and activities are supported in the context of balancing the rights, risks, and personal choices of the individual. Individuals are supported in opportunities to make changes when so expressed. Choice may be communicated orally, through sign language, or by other communication methods.

(23) "CMS" means "Centers for Medicare and Medicaid Services".

(24) "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.

(25) "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.

(26) "Complaint" means an allegation that a licensee or caregiver has violated these rules or an expression of dissatisfaction with a service provider, the services provided, or the condition of an adult foster home.

(27) "Complaint Investigation" means the investigation of any complaint that has been made to a proper authority that is not covered by an abuse investigation.

(28) "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.

(29) "Controlled Substance" means any drug classified as schedules one through five under the Federal Controlled Substance Act.

(30) "Crisis" means "crisis" as defined in OAR 411-320-0020.

(31) "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.

(32) "Delegation" means that 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. Delegation by a physician is also allowed.

(33) "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.

(34) "Department" means the Department of Human Services or the designee of the Department.

(35) "Developmental Disability" means "developmental disability" as defined in OAR 411-320-0020 and described in 411-320-0080.

(36) "Direct 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. Direct nursing service differs from administrative nursing services. Administrative nursing services include non-individual-specific services, such as quality assurance reviews, authoring health related agency policies and procedures, or providing general training for caregivers.

(37) "Director" means the Director of the Department or the designee of the Director.

(38) "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.

(39) "Domestic Animals" mean the animals domesticated so as to live and breed in a tame condition, such as dogs, cats, and domesticated farm stock.

(40) "Enjoin" means to prohibit by judicial order.

(41) "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.

(42) "Entry" means admission to a licensed adult foster home for individuals with intellectual or developmental disabilities.

(43) "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 443.705 to 443.825. Exempt area county licensing rules require review and approval by the Director prior to implementation.

(44) "Exit" means termination or discontinuance of a Department-funded developmental disability service by a Department licensed or certified provider.

(45) "Facility" means the physical structure of an adult foster home for individuals with intellectual or developmental disabilities.

(46) "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 a person alleged to have engaged in the conduct.

(47) "Functional Needs Assessment":

(a) Means the comprehensive assessment or re-assessment that:

(A) Documents physical, mental, and social functioning;

(B) Identifies risk factors, choices and preferences, service and support needs, strengths, and goals; 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 Version 14a of the SNAP dated March 31, 2014 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>. Printed copies may be obtained by calling (503) 945-6398 or writing the Department of Human Services, Developmental Disabilities, ATTN: Rule Coordinator, 500 Summer Street NE, Salem, OR 97301.

(48) "Guardian" means the parent of an individual less than 18 years of age or a person or agency appointed and authorized by a court to make decisions about services for an individual. A paid provider for an individual may not be the guardian of the individual.

(49) "Hearing" means a contested case hearing subject to OAR 137-003-0501 to 137-003-0070, which results in a final order.

(50) "Home" means the physical structure of an adult foster home for individuals with intellectual or developmental disabilities.

(51) "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.

(52) "House Rules" means the written and posted statements governing house activities in an adult foster home that do not conflict with the Adult Foster Home Bill of Rights.

(53) "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.

(54) "Independence" means the extent to which an individual exerts control and choice over his or her own life.

(55) "Indirect Ownership Interest" means an ownership interest in an entity that has an ownership interest in the disclosing entity.

(56) "Individual" means an adult residing in an adult foster home for individuals with intellectual or developmental disabilities, regardless of source of compensation.

(57) "Individualized Education Plan" means the written plan of instructional goals and objectives developed in conference with an individual less than 21 years of age, the parent or legal representative of the individual (as applicable), teacher, and a representative of the public school district.

(58) "Intellectual Disability" means "intellectual disability" as defined in OAR 411-320-0020 and described in 411-320-0080.

(59) "Involuntary Transfer" means a provider has made the decision to transfer an individual and the individual or the legal representative of the individual has not given prior approval.

(60) "ISP" means "Individual Support Plan". An ISP includes the written details of the supports, activities, and resources required for an individual 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 the services and supports that are important for the individual to meet the needs of the individual identified through a functional needs assessment as well as the preferences of the individual for service 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, state plan, or natural supports.

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(61) “ISP Team” means a team composed of an individual receiving services and the legal representative of the individual, services coordinator or personal agent, and others chosen by the individual or the legal representative of the individual, such as providers or family members.

(62) “Legal Representative” means a person who has the legal authority to act for an individual. 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.

(63) “License” means a document granted by the Department to an applicant who is in compliance with the requirements of these rules.

(64) “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.

(65) “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.

(66) “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.

(67) “Mandatory Reporter”:

(a) Means any public or private official as defined in OAR 407-045-0260 who:

(A) Is a provider, resident manager, caregiver, or volunteer 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.

(B) Is a provider, resident manager, caregiver, or volunteer 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) 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 419B.231 is not required to report if the communication is privileged under 40.225 to 40.295.

(68) “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 475.346.

(69) “Mechanical Restraint” means any mechanical device, material, object, or equipment that is 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.

(70) “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.

(71) “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.

(72) “Monitoring” means the periodic review of the implementation of services and supports identified in an Individual Support Plan and the quality of services delivered by other organizations.

(73) “Natural Supports” mean the voluntary resources available to an individual from the relatives, friends, significant others, neighbors, roommates, and the community of the individual that are not paid for by the Department.

(74) “Nursing Service Plan” means the plan that is developed by a registered nurse based on an initial nursing assessment, reassessment, or an update made to a nursing assessment as the result of a monitoring visit.

(a) The Nursing Service Plan is specific to an individual and identifies the diagnoses and health needs of the individual and any service coordination, teaching, or delegation activities.

(b) The Nursing Service Plan is separate from the ISP and any service plans developed by other health professionals.

(75) “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.

(76) “OHP Plus” means only the Medicaid benefit packages provided under OAR 410-120-1210(4)(a) and (b).

(77) “OIS” means the “Oregon Intervention System”. OIS is the system of providing training to people who work with designated individuals to provide elements of positive behavior support and non-aversive behavior intervention. OIS uses principles of pro-active support and describes approved protective physical intervention techniques that are used to maintain health and safety.

(78) “OSIP-M” means “Oregon Supplemental Income Program-Medical” as described in OAR 461-001-0030. OSIP-M is Oregon Medicaid insurance coverage for individuals who meets the eligibility criteria described in OAR chapter 461.

(79) “Over the Counter Topical” means a medication that is purchased without a prescription and is applied to the skin and not in an orifice.

(80) “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 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.

(81) “Personal Agent” means “personal agent” as defined in OAR 411-340-0020.

(82) “Protection” means necessary actions taken as soon as possible to prevent subsequent abuse or exploitation of an individual, to prevent self-destructive acts, or to safeguard the person, property, and funds of an individual.

(83) “Protective Physical Intervention” means any manual physical holding of or contact with an individual that restricts freedom of movement.

(84) “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.

(85) “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.

(86) “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 411-360-0110.

(87) “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.

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(88) “Qualified Entity Initiator (QEI)” has the meaning set forth in OAR 407-007-0210 (Criminal Records and Abuse Checks for Providers).

(89) “Qualified Mental Health Professional” means a licensed medical practitioner or any other person meeting the qualifications specified in OAR 309-019-0125.

(90) “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.

(91) “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.

(92) “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.

(93) “Respite” means “relief care” as defined in this rule.

(94) “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.

(95) “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.

(96) “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.

(97) “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, recreational and leisure activities, and other services required to meet the needs of the individual as described in the ISP for the individual.

(98) “Services Coordinator” means “services coordinator” as defined in OAR 411-320-0020.

(99) “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.

(100) “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.

(101) “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.

(102) “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.

(103) “Support” means the assistance that an individual requires, solely because of the affects of an intellectual or developmental disability, to maintain or increase independence, achieve community presence and participation, and improve productivity. Support is subject to change with time and circumstances.

(104) “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.

(105) “Tenant” means an individual who resides in an adult foster home and receives services such as meal preparation, laundry, and house-keeping.

(106) “These Rules” mean the rules in OAR chapter 411, division 360.

(107) “Transfer” means movement of an individual from one home to another home administered or operated by the same provider.

(108) “Transition Plan” means the written plan of services and supports for the period of time between the entry of an individual into an adult foster home and the development of an ISP for the individual. The Transition Plan is approved by a services coordinator and includes a summary of the services necessary to facilitate adjustment to the adult foster home, the supports necessary to ensure health and safety, and the assessments and consultations necessary for ISP development.

(109) “Unusual Incident” means any incident involving an individual that includes an act of physical aggression, serious illness or an accident, injury or illness requiring inpatient or emergency hospitalization, a suicide attempt, death, when an individual contacts the police or is contacted by the police, a fire requiring the services of a fire department, or any incident requiring an abuse investigation.

(110) “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.

(111) “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.

(112) “Young Adult” means a young individual age 18 through 21 who resides in an adult foster home under the custody of the Department, voluntarily, or under guardianship. A young adult may include an individual who is less than 18 years of age.

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 29-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14

## 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

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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 47. 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 house rules 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 8, 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

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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 parent who retains legal guardianship of the young adult, 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 parent who retains legal guardianship of the young adult, 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 parent who retains legal guardianship of the young adult;

(ii) The legal guardian of the young adult; or

(iii) 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 maintained by the Department, 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 may not be 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) DIRECT NURSING SERVICES. 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 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

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(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 comply with:

(A) Provider record and documentation requirements referenced in OAR 407-120-0100 -1505 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) 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 47.

(a) The delegation process includes:

(A) Assessing an individual in a specific situation;

(B) Evaluating the ability of the provider, resident manager, or substitute caregiver to perform the nursing task;

(C) Teaching the nursing task;

(D) Ensuring supervision of the provider, resident manager, or substitute caregiver; and

(E) Re-evaluating the nursing task at regular intervals.

(b) The provider, resident manager, or substitute caregiver performs nursing tasks under the delegated authority of a registered nurse.

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 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

## 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 preferred by the individual and designated back up licensed health care provider or clinic;

(iii) The dentist preferred by the individual;

(iv) The day program or employer (if any);

(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 working 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 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. A complete ISP must be developed by the end of

## ADMINISTRATIVE RULES

60 days. The ISP must be updated at least annually and more often when the support needs of the individual change.

(a) A completed ISP must be documented on the Department-mandated Foster Care ISP Form and include the following:

(A) What is most important to the individual and what works and doesn't work;

(B) The care, services, and support needs as identified by a functional needs assessment;

(C) The type and frequency of care, services, and supports to be provided; and

(D) The person responsible for carrying out the care, services, and supports.

(b) 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.

(c) For an individual in employment services, day support activities, or other Department-funded day services, a copy of the plan maintained by the service provider for employment services, day support activities, or other Department-funded services must be integrated or attached to the ISP for the individual.

(d) 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) Day support activities;

(ii) Rehabilitation;

(iii) Educational services; or

(iv) Employment services.

(5) HOUSE RULES.

(a) A provider must establish house rules regarding hours, visitors, designated smoking areas, alcohol, use and presence of medical marijuana, meal times, use of telephones and kitchen, monthly charges and services to be provided, and policies on refunds in case of departure, hospitalization, or death. The house rules must also include:

(A) House rules specific to the immediate notification of substantiated abuse as described in OAR 411-360-0210; and

(B) Any restrictions the AFH-DD may have on the use and presence of alcohol, tobacco, medical marijuana (if applicable), pets, visiting hours, dietary restrictions, or religious preference.

(i) 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 must be in compliance with the Oregon Medical Marijuana Act and OAR 411-360-0140. The house rules for medical marijuana must be reviewed and approved by the Department. If an individual intends to use medical marijuana in the AFH-DD, the house rules 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.

(b) House rules may not violate the rights of an individual as stated in ORS 430.210, 443.739, OAR 411-318-0010, and described in section (9) of this rule.

(c) House rules may not be in conflict with the family atmosphere of the AFH-DD or any of these rules.

(d) House rules are subject to review and approval by the Department prior to the issuance of a license and prior to implementing changes.

(e) A provider must discuss and provide a copy of the house rules to each individual and the legal representative of the individual at the time of entry and annually or as changes occur. The provider must document in the file for the individual that a copy of the house rules was provided.

(f) House rules must be posted in a conspicuous location in the AFH-DD that is accessible to individuals and visitors.

(6) UNUSUAL INCIDENTS. A written report of all unusual incidents relating to an individual must be sent to the CDDP within five working 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.

(7) GENERAL INFORMATION. The provider must maintain all other information or correspondence pertaining to the individual.

(8) 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.

(9) BILL OF RIGHTS FOR INDIVIDUALS.

(a) The provider must abide by the Bill of Rights for individuals.

(b) The Bill of Rights must be posted in a conspicuous location in the AFH-DD that is accessible to individuals and the legal representatives of the individuals. The Bill of Rights must include the name and phone number of the office to call in order to report a complaint.

(c) 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.

(d) The provider must review the Bill of Rights with each individual and the legal representative of the individual annually or as changes occur.

(e) The Bill of Rights states each individual has the right to:

(A) Be treated as an adult with respect and dignity;

(B) Be free from abuse and neglect;

(C) Be encouraged and assisted to exercise constitutional and legal rights as a citizen including the right to vote;

(D) Receive appropriate care and services and prompt health care as needed;

(E) Have adequate personal privacy and privacy to associate and communicate privately with any person of choice such as family members, friends, advocates, and legal, social service, and medical professionals;

(F) Send and receive personal mail unopened and engage in telephone conversations as explained in OAR 411-360-0130;

(G) Have access to and participate in activities of social, religious, and community groups;

(H) Be able to keep and use personal clothing and possessions as space permits;

(I) Be free of discrimination in regard to race, color, national origin, gender, sexual orientation, or religion;

(J) Manage his or her financial affairs unless determined unable by the ISP team or legally restricted;

(K) Have a safe and secure environment;

(L) Have a written agreement regarding the services to be provided;

(M) Voice grievance without fear of retaliation;

(N) Have freedom from training, treatment, mechanical or chemical restraint, or protective physical interventions except as agreed to, in writing, in the ISP for an individual;

(O) Be allowed and encouraged to learn new skills, to act on his or her own behalf to his or her maximum ability and to relate to others in an age appropriate manner;

(P) Have an opportunity to exercise choices including such areas as food selection, personal spending, friends, personal schedule, leisure activities, and place of residence;

(Q) Be free from punishment. Behavior intervention programs must be approved in writing in the ISP for an individual;

(R) Have the opportunity to contribute to the maintenance and normal activities of the household;

(S) Have access and opportunity to interact with people with or without disabilities; and

(T) Have the right to not be transferred or moved without advance notice as provided in ORS 443.739(18) and OAR 411-088-0070 and the opportunity for a hearing as provided in ORS 443.738(11)(c) and OAR 411-088-0080.

(10) AFH-DD records must be kept current and maintained by the provider and be available for inspection upon request.

(11) 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 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;

# ADMINISTRATIVE RULES

(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 - 443.825

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

## 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 community living support.

(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 support services brokerage; and

(C) Not be receiving 24-hour residential services for children and adults with intellectual or developmental disabilities as described in OAR chapter 411, division 325 or supported living services for adults with intellectual or developmental disabilities 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 461-001-0000) is subject to the rules regarding transfer of assets (see 461-140-0210 to 461-140-0300) in the same manner as if the individual was requesting these services under OSIP-M. This includes, but is not limited to, the following assets:

(i) An annuity that is evaluated according to OAR 461-145-0022;

(ii) A transfer of property when an individual retains a life estate that is evaluated according to OAR 461-145-0310;

(iii) A loan made by an individual that is evaluated according to OAR 461-145-0330; or

(iv) An irrevocable trust that is evaluated according to OAR 461-145-0540;

(B) When an individual is disqualified for a 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 OSIP-M.

(C) An individual found to have transferred assets is not eligible for adult foster care services.

(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 a physical exam made within 90 days prior to entry;

(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 Plan (if applicable); and

(H) Copies of protocols, risk tracking record, and any support documentation (if applicable).

(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 name of the individual proposed for services;

(b) The date of the meeting and the date determined to be the date of entry for the individual;

(c) Documentation of the participants included in the meeting;

(d) Documentation of the pre-entry information required by section (4) of this rule;

(e) Documentation of the decision to serve the individual requesting services; and

(f) 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.

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(b) Before a transfer, an individual must be presented with at least three appropriate placement setting options including at least two different types of residential settings.

(A) The Department or the designee of the Department may not transfer an adult from a placement setting without first complying with subsection (b) of this section.

(B) The Department or the designee of the Department is not required to present the options under subsection (b) of this section if:

(i) The Department or the designee of the Department demonstrates that three appropriate placement settings or two different types of residential settings are not available within the geographic area where the adult wishes to reside;

(ii) The adult selects a placement setting option and waives the right to be presented with the placement setting options described in subsection (b) of this section; or

(iii) The adult is at imminent risk to health or safety in the current placement setting.

(c) 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. A provider may exceed the licensed capacity of the AFH-DD by one or more individuals receiving relief care 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 relief care.

(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 consecutive 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 working 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 individual's file 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;

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(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 - 443.825

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

## 411-360-0250

### Conditions

(1) The Department may attach conditions to a license that take effect immediately upon notification by the Department or the delivery of the notice of condition whichever is sooner. The type of conditions attached to an AFH-DD license must directly relate to a risk of harm or potential risk of harm to individuals. The Department may attach a condition to a license 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 AFH-DD is not being operated in compliance with these rules.

(2) Conditions that the Department may impose on a license include, but are not limited to:

(a) Restricting the total number of individuals in the AFH-DD based upon the ability of the licensee to meet the health and safety needs of the individuals;

(b) Restricting the number and impairment level of individuals in the AFH-DD based upon the capacity of the caregivers to meet the health and safety needs of all individuals;

(c) Requiring additional caregivers to meet the needs of the individuals;

(d) Requiring additional qualifications or training of the licensee and caregivers to meet specific individual care and service needs;

(e) Requiring additional documentation;

(f) Restricting a provider from opening an additional AFH-DD;

(g) Restricting admissions:

(A) When there is a threat of harm to the individuals of the AFH-DD and admitting new individuals compounds that threat; or

(B) When the Department has issued a notice of intent to revoke or not renew the license; and

(h) Restricting a licensee from allowing a person on the premises who may be a threat to the health, safety, or welfare of an individual.

(3) A written notice is issued to the licensee by the Department when the Department imposes conditions. The written notice of conditions

includes the conditions imposed by the Department, the reason for the conditions, and the opportunity to request a hearing under ORS chapter 183.

(4) The licensee may request a hearing in accordance with ORS Chapter 183 and this rule upon written notice of the imposition of conditions.

(a) The licensee must request a hearing within 21 calendar days from the receipt of the written notice of conditions. Conditions take effect immediately upon issuance of the written notice of conditions and are a final order of the Department unless later rescinded through the hearings process.

(b) In addition to, or in lieu of a hearing, a licensee may request an administrator review by the Director of the Department. The administrator review does not diminish the right of the licensee to a hearing.

(5) Conditions imposed remain in effect until the Department has sufficient cause to believe the situation that warranted the condition has been remedied. The licensee may send a written request to the Department to remove a condition if the licensee believes the situation that warranted the condition has been remedied.

(6) Conditions must be posted with the AFH-DD license in a prominent location in the AFH-DD and be available for inspection at all times.

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 13-2010, f. 6-30-10, cert. ef. 7-1-10; 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

## 411-360-0275

### Suspension

(1) The Department may suspend a license for reasons of abuse, neglect, or exploitation of an individual if:

(a) An immediate threat to the health, safety, or welfare of any individual exists;

(b) There is reliable evidence of abuse, neglect, or exploitation of any individual;

(c) The AFH-DD is not operated in compliance with ORS 443.705 to 443.825 or the rules adopted there under; or

(d) The provider has been found to have been convicted of a crime that would have resulted in a denied fitness determination of a background check.

(2) The licensee may request an administrator review of the decision of the Department to suspend an AFH-DD license. The Department must receive a written request for an administrator review within 10 calendar days from the receipt of the notice and order of suspension.

(a) Within 10 calendar days from the receipt of the request for an administrator review from the licensee, all material relating to the allegation of abuse, neglect, or exploitation and the suspension of the AFH-DD license, including any written documentation submitted by the licensee within that timeframe, is reviewed by the Director of the Department. Based on review of the material, the Director determines whether to sustain the decision to suspend the AFH-DD license.

(b) A suspension is rescinded immediately if the Director does not sustain the decision to suspend the AFH-DD license.

(c) The decision of the Director is subject to a hearing under ORS chapter 183 if requested within 90 calendar days from the date of the decision of the administrator review.

(3) In the event the license to maintain an AFH-DD is ordered immediately suspended, the Department withholds service payments until the license is reinstated.

(4) For the protection of the individuals, the Department arranges for the individuals in the AFH-DD to move when the AFH-DD license is suspended.

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 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

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**Rule Caption:** Personal Support Workers Providing Developmental Disability In-Home Services

**Adm. Order No.:** APD 30-2014(Temp)

**Filed with Sec. of State:** 7-1-2014

**Certified to be Effective:** 7-1-14 thru 12-28-14

**Notice Publication Date:**

**Rules Adopted:** 411-375-0000, 411-375-0010, 411-375-0020, 411-375-0030, 411-375-0040, 411-375-0050, 411-375-0060, 411-375-0070, 411-375-0080

# ADMINISTRATIVE RULES

**Subject:** The Department of Human Services (Department) is immediately adopting rules in OAR chapter 411, division 375 for personal support workers providing home and community-based waiver, state plan, and general fund in-home services to individuals eligible for developmental disability services and receiving supports authorized by the Department, Children’s Intensive In-Home Services (CIIS), Community Developmental Disability Programs (CDDP), or Support Services Brokerages.

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

**Rules Coordinator:** Kimberly Colkitt-Hallman—(503) 945-6398

## 411-375-0000

### Purpose

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

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

Stat. Auth.: ORS 409.050

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

Hist.: APD 30-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14

## 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) “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 home licensed to provide 24-hour residential services as described in OAR chapter 411, division 325.

(b) For an adult, “abuse” as defined in OAR 407-045-0260.

(2) “ADL” means “activities of daily living”. ADL are basic personal everyday activities, such as eating, using the restroom, grooming, dressing, bathing, and transferring.

(3) “Administrator Review” means the review of a decision as described in OAR 411-375-0080.

(4) “Background Check” means a criminal records and abuse check as defined in OAR 407-007-0210.

(5) “Burden of Proof” means that the existence or nonexistence of a fact is established by a preponderance of the evidence.

(6) “CDDP” means “Community Developmental Disability Program” as defined in OAR 411-320-0020.

(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) “Collective Bargaining Agreement” means the ratified Collective Bargaining Agreement between the Home Care Commission and the Service Employees International Union, Local 503. The Collective Bargaining Agreement is maintained on the Department’s website: ([http://www.oregon.gov/dhs/spd/Pages/adv/hcc/tools\\_hcw.aspx](http://www.oregon.gov/dhs/spd/Pages/adv/hcc/tools_hcw.aspx)). 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-10, Salem, Oregon 97301.

(9) “Community Transportation” is transportation provided to enable an individual to gain access to community-based state plan and waiver services, activities, and resources. 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. The area is

not determined by the social or recreational groups or activities of an individual.

(10) “Comprehensive Services” means “comprehensive services” as defined in OAR 411-320-0020.

(11) “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).

(12) “Contracted Personal Support Worker” means a personal support worker who is contracted by an individual with an intellectual or developmental disability or the representative of the individual. A contracted personal support worker is an independent contractor except for purposes of collective bargaining.

(13) “CPMS” means the “Client Process Monitoring System” as defined in OAR 411-317-0000.

(14) “Department” means the Department of Human Services.

(15) “Designated Representative” means any adult, such as a parent, family member, guardian, advocate, or other person, authorized in writing by an individual to serve as the representative of the individual in connection with the provision of funded supports, who is not also a paid provider for the individual. An individual is not required to appoint a designated representative.

(16) “Developmental Disability” means “developmental disability” as defined in OAR 411-320-0020 and described in 411-320-0080.

(17) “Director” means the Director of the Department of Human Services, Office of Developmental Disability Services or the designee of the Director.

(18) “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.

(19) “Employer” means the person who provides the employer responsibilities described in these rules and applicable in-home services rules. The employer may be the individual or a person selected by the individual or the legal representative of the individual.

(20) “Employer Representative” means the person selected by the individual or the legal representative of the individual to act on the behalf of the individual to provide the responsibilities of an employer.

(21) “Enrolled Provider” means a personal support worker who has completed the provider enrollment process, has been issued a provider number, and is authorized by the Department to receive payment for providing in-home services to an individual.

(22) “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.

(23) “FICA” means “Federal Insurance Contributions Act”.

(24) “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, 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.

(25) “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 in-home services.

(26) “General Business Provider” means an organization or entity selected by an individual or the representative of an individual and paid with service funds that:

(a) Is primarily in business to provide the service chosen by the individual or the representative of the individual to the general public;

(b) Provides services 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.

(27) “Hearing” means a contested case hearing subject to OAR 137-003-0501 to 137-003-0070, which results in a final order.

# ADMINISTRATIVE RULES

(28) "IADL" means "instrumental activities of daily living". IADL include activities other than ADL required to continue independent living, such as:

- (a) Meal planning and preparation;
- (b) Budgeting;
- (c) Shopping for food, clothing, and other essential items;
- (d) Performing essential household chores;
- (e) Communicating by phone or other media; and
- (f) Participating in the community.

(29) "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.

(30) "Independent Contractor" means "independent contractor" as defined in ORS 670.600.

(31) "Individual" means an adult or a child with an intellectual or developmental disability who receives Department-funded services in accordance with an ISP.

(32) "In-Home 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 and day support activities for adults 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.

(33) "ISP" means "Individual Support Plan". An ISP includes the written details of the supports, activities, and resources required for an individual 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 the services and supports that are important for an individual to meet the needs of the individual identified through a functional needs assessment as well as the preferences of the individual for service 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, state plan, or natural supports.

(34) "Lack of Skills, Knowledge, or Ability to Adequately or Safely Provide In-Home Services" means a personal support worker does not possess the skills to perform in-home services as defined in this rule. The personal support worker may not be physically, mentally, or emotionally capable of providing in-home 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.

(35) "Legal Representative":

(a) For a child, means the parent of the child unless a court appoints another person or agency to act as the guardian of the child; and

(b) For an adult, means an attorney at law who has been retained by or for an adult individual, a power of attorney for an adult individual, or a person or agency authorized by a court to make decisions about services for an adult individual.

(36) "Mandatory Reporter":

(a) Means any public or private official as defined in OAR 407-045-0260 who:

(A) 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 a child, regardless of whether or not the knowledge of the abuse was gained in the official capacity of the public or private official; and

(B) 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 an adult.

(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 419B.231 is not required to report if the communication is privileged under 40.225 to 40.295.

(37) "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.

(38) "Personal Agent" means "personal agent" as defined in OAR 411-340-0020.

(39) "Personal Support Worker":

(a) Means a person:

(A) Who is either hired by an individual with an intellectual or developmental disability or the representative of the individual, or an independent contractor contracted by an individual with an intellectual or developmental disability or the representative of the individual;

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

(C) Whose compensation for providing in-home services is provided in whole or in part through the Department, CDDP, CIIS, or Support Service Brokerage.

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

(40) "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.

(41) "Protective Service and Abuse Rules" mean the rules described in OAR chapter 411, division 20, OAR chapter 407, division 45, and OAR chapter 943, division 45.

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

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

(44) "Provider Number" means the identifying number issued to an enrolled provider.

(45) "Registry" means the Provider Registry and Referral System maintained by the Oregon Home Care Commission.

(46) "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.

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

(48) "Services Coordinator" means an employee of the Department, CDDP, 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.

(49) "Support Services Brokerage" means "brokerage" as defined in OAR 411-340-0020.

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

(51) "Unacceptable Background Check" means a check 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) The person applying to be a personal support worker has been disqualified under OAR 407-007-0275;

(b) 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 disqualified under OAR 407-007-0275; or

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

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

# ADMINISTRATIVE RULES

## 411-375-0020

### Provider Enrollment and Personal Support Worker Qualifications and Orientation

(1) A personal support worker must complete the provider enrollment process and possess a current provider number issued by the Department to receive service funds from the Department for providing in-home services.

(2) Provider enrollment with the Department is not a guarantee that an enrolled provider shall receive any minimum amount of work or payment from the Department, CDDP, CIIS, or Support Service Brokerage.

(3) The Department may deny an application for provider enrollment in the following circumstances:

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

(b) The applicant has a history of violating protective service and abuse rules or has a founded report of child abuse or substantiated abuse;

(c) The applicant has committed fiscal improprieties;

(d) The applicant demonstrates a lack of skills, knowledge, or ability to adequately or safely provide in-home services;

(e) The applicant has an unacceptable background check and the background check results in a closed case pursuant to OAR 407-007-0325;

(f) The applicant is less than 18 years of age;

(g) The applicant is on the list of excluded or debarred providers maintained by the Office of the Inspector General (<http://exclusions.oig.hhs.gov/>);

(h) The Department, CDDP, CIIS, or Support Services Brokerage has information that enrolling the applicant as a personal support worker may put vulnerable individuals at risk; or

(i) The tax identification number or social security number for the applicant does not match the legal name of the applicant as verified by the Internal Revenue Service or Social Security Administration.

#### (4) RESTRICTED PROVIDER ENROLLMENT.

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

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

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

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

(5) To be eligible to become an enrolled provider, a personal support worker must:

(a) Maintain a drug-free work place;

(b) Be at least 18 years of age;

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

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

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

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

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

(B) 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 personal support worker has knowledge of emergency procedures specific to the individual;

(g) Maintain confidentiality and safeguard individual information.

Unless given specific permission by an individual or the representative of an individual, the personal support worker may not share any personal

information about the individual including medical, social service, financial, public assistance, legal, or other personal details;

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

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

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

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

#### (6) BACKGROUND CHECKS.

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

(b) When a personal support worker is approved without restrictions following a background check fitness determination, the approval must meet the personal support worker provider enrollment requirement whether the qualified entity is the Department, CDDP, CIIS, or Support Services Brokerage.

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

(d) Prior background check approval for another Department provider type is inadequate to meet background check requirements for personal support worker enrollment.

(e) Background check approval is effective for two years from the date a personal support worker is hired or contracted with to provide in-home services except in the following circumstances:

(A) Based on possible criminal activity or other allegations against the personal support worker, a new fitness determination is conducted resulting in a change in approval status; or

(B) The background check approval has ended because the Department has inactivated or terminated the provider enrollment for the personal support worker.

(f) The Department, CDDP, CIIS, or Support Services Brokerage may conduct a background recheck more frequently based on additional information discovered about the personal support worker, such as possible criminal activity or other allegations.

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

(7) ORIENTATION. A personal support worker who wants to be active for referral on the Registry must attend a New Member Orientation provided by the Oregon Home Care Commission. As indicated in the Collective Bargaining Agreement, a personal support worker who wants to be active on the Registry must attend a New Member Orientation within 90 days from the issuance of a provider number or the provider number for the personal support worker is inactivated.

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

## 411-375-0030

### Personal Support Worker-Individual Relationship

(1) A personal support worker may not be the parent of the individual if the individual is less than 18 years of age or the spouse of the individual.

(2) The relationship between a personal support worker and an individual or the representative of the individual is:

(a) For an employed personal support worker, an employee and employer relationship; and

(b) For a contracted personal support worker, a contractor relationship.

(3) It is the responsibility of an individual or the representative of the individual to create and maintain:

(a) A written job description for each potential employed personal support worker. The job description must contain:

# ADMINISTRATIVE RULES

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

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

(C) Authorized hours of in-home services provided by the employed personal support worker to the individual. Authorized hours may not exceed the maximum amounts of units of service as assessed for the individual by a functional needs assessment.

(b) A written service agreement for each contracted personal support worker that describes the services and responsibilities of the contracted personal support worker. The service agreement must contain all the elements from an authorized ISP to assure the contracted personal support worker may execute the service agreement.

(4) An individual or the representative of the individual carries primary responsibility for locating, interviewing, screening, and hiring or contracting with a personal support worker. The individual or the representative of the individual has the right to employ or contract with any personal support worker enrolled as a provider as described in OAR 411-375-0020.

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

(A) Facilitating a background check;

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

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

(b) The Department makes the final determination as to whether the personal support worker meets the minimum qualifications to provide the authorized in-home services paid by the Department.

(5) The terms of the employer-employee or contractor relationship are the responsibility of the individual or the representative of the individual to establish at the time of hire or written service agreement. The terms of employment may include dismissal or notice of resignation, work scheduling, and absence reporting.

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

## 411-375-0040

### Fiscal and Accountability Responsibility

(1) **DIRECT SERVICE PAYMENTS.** The Department, CDDP, CIIS, CDDP, Support Services Brokerage, or contracted fiscal intermediary makes payment to a personal support worker on behalf of an individual for all in-home services. Payment is considered full payment for the in-home services rendered. The personal support worker may not, under any circumstances, demand or receive additional payment for in-home services from the individual or any other source. The Department only makes payment for in-home services that are identified in a functional needs assessment, authorized in an ISP, and included in a written job description or contract.

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

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

(a) The in-home services were provided in compliance with all applicable rules and requirements in effect on the date of service;

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

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

(4) **ANCILLARY CONTRIBUTIONS.**

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

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

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

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

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

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

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

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

(5) **ANCILLARY WITHHOLDINGS.** For the purposes of this subsection of the rule, "Union" means any labor organization that represents personal support workers in employment or contractor relations.

(a) The Department, CDDP, CIIS, Support Services Brokerage, or contracted fiscal intermediary deducts a specified amount of fair share or dues from the monthly salary or wages of a personal support worker for payment to the Union.

(b) In order for the Union to receive payment for the fair share and dues of the personal support worker, the Union must enter into a written agreement with the Department, CDDP, Support Services Brokerage, or designated fiscal intermediary to pay the actual administrative costs of the deductions. A CDDP or Support Services Brokerage who has a written agreement with the Department must have a written agreement with a contracted fiscal intermediary.

(c) The Department, CDDP, CIIS, Support Services Brokerage, or contracted fiscal intermediary pays the deducted amount of fair share and dues to the designated Union monthly.

(6) **STATE AND FEDERAL INCOME TAX WITHHOLDING.**

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

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

(A) Personal support workers for a CDDP or Support Services Brokerage must return the IRS forms to the local office of the CDDP or Support Services Brokerage.

(B) Personal support workers for CIIS must return the IRS forms to the Central Office of the Department.

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

Stat. Auth.: ORS 409.050

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

Hist.: APD 30-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14

## 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 in-home 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 in-home 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.

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cle 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 the Division of Medical Assistance Programs (DMAP).

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

(c) Reimbursement for transporting an individual to accomplish an ADL, IADL, or 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.

(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 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

## 411-375-0060

### Overpayments

An overpayment is any payment made by the Department, CDDP, CIIS, or Support Services Brokerage to a personal support worker that is more than the personal support worker is authorized to receive.

(1) Overpayments are categorized as follows:

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

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

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

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

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

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

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

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

(3) Overpayments for contracted personal support workers are recovered as follows:

(a) For overpayments discovered within 10 calendar days after the overpayment, the full amount is deducted from the next payment to the contracted personal support worker.

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

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

Stat. Auth.: ORS 409.050

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

Hist.: APD 30-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14

## 411-375-0070

### Provider Enrollment Inactivation and Termination

(1) The provider enrollment for a personal support worker may be inactivated in the following circumstances:

(a) The personal support worker has not provided any paid in-home 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 in-home services in Oregon;

(c) The personal support worker fails to participate in a New Member Orientation for personal support workers for inclusion on the Registry 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) The personal support worker, even if not providing any paid in-home 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

(f) Provider payments, all or in part, for the personal support worker have been suspended based on a credible allegation of fraud or has a conviction for fraud pursuant to federal law under 42 CFR 455.23.

(2) The Department, CDDP, CIIS, or Support Services Brokerage may terminate the provider enrollment for a personal support worker in the following circumstances:

(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 in-home services;

(d) The personal support worker violates 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 in-home 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 in-home services as described in the ISP and position description;

(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; or

(k) The personal support worker fails to provide a tax identification number or social security number that matches the legal name of the personal support worker as verified by the Internal Revenue Service or Social Security Administration.

(3) NOTICE OF TERMINATION. When the Department, CDDP, CIIS, or Support Services Brokerage decides to terminate the provider enrollment of a personal support worker, the Department, CDDP, CIIS, or Support Services Brokerage must issue a written notice to the personal support worker.

(a) The written notice must include:

(A) An explanation of the reason for terminating the provider enrollment;

(B) The alleged violation as listed in section (2) of this rule;

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(C) The appeal rights 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.

(b) For terminations based on substantiated protective services allegations, 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.

(4) IMMEDIATE TERMINATION. The Department, CDDP, CIIS, or Support Services Brokerage may immediately terminate the provider enrollment for a personal support worker on the date an alleged violation listed in section (2) of this rule is discovered, prior to the outcome of an administrator review, when the alleged violation presents imminent danger to current or future individuals. The personal support worker must file an appeal within 10 business days from the date of the notice of termination as described in OAR 411-375-0080.

(5) TERMINATION PENDING APPEAL. When a violation does not present imminent danger to current or future individuals, the provider enrollment 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 as described in OAR 411-375-0080. If the personal support worker files an appeal in writing prior to the deadline, the provider enrollment of the personal support worker may not be terminated until the appeal is resolved unless subsequent conduct of the personal support worker presents an imminent danger to a current individual recipient of in-home services provided by the personal support worker.

(6) TERMINATION IF NO APPEAL FILED. The decision of the Department, CDDP, CIIS, or Support Services Brokerage becomes final if a personal support worker does not request a hearing within 10 business days from the date of the notice of termination. The provider enrollment for a personal support worker is terminated once the time period for the personal support worker to request a hearing has expired.

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

## 411-375-0080

### Administrator Review and Hearing Rights

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

(a) Terminations 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) Personal support workers that have not worked within the previous 12 months. The provider enrollment may become inactivated but may not be terminated. To activate the provider enrollment number, the personal support worker must complete an application and background check.

(c) Personal support workers that fail to complete a background recheck.

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

(e) Personal support workers not currently providing services to any individuals whose provider enrollment is inactivated while an Adult or Child Protective Services investigation is being completed.

(f) Personal support workers who have been excluded or debarred by the Office of the Inspector General.

(2) FILING AN APPEAL. If a personal support worker decides to file an appeal, the personal support worker must specify in the appeal, the issues or decisions being appealed and the reason for the appeal. The appropriate party, as stated in the notice of termination, must receive the appeal within 10 business days of the notice of termination.

(3) INFORMAL CONFERENCE. The program manager or the designee of the program manager at the local office of the Department, CDDP, CIIS, or Support Services Brokerage must conduct an informal conference, as described in OAR 461-025-0325, if requested by a personal support worker within five business days from the receipt of an appeal. The informal conference must be scheduled with the personal support worker and, if requested, a representative of the Union. The program manager or the designee of the program manager at the local office of the Department, CDDP, CIIS, or Support Services Brokerage must meet with the personal support worker, review the facts, and explain the decision to terminate the provider enrollment. The informal conference may be held by telephone.

(4) ADMINISTRATOR REVIEW. The administrator review process allows an opportunity for the Department, CDDP, CIIS, or Support Services Brokerage to review and reconsider the decision to terminate the provider enrollment of a personal support worker. The administrator review may include the provision of new information or other actions that may result in the Department, CDDP, CIIS, or Support Services Brokerage changing the decision to terminate the provider enrollment of the personal support worker.

(a) The first level of an administrator review for a termination pending an appeal as described in OAR 411-375-0070 is performed by a program manager or the designee of the program manager at the local office of the Department, CDDP, CIIS, or Support Services Brokerage. A provider termination may be overturned at the first level of an administrator review and provider enrollment may be reinstated. If the first level of an administrator review results in a provider termination being upheld, a new notice of termination with a new effective date shall be issued to the provider by the program manager or the designee of the program manager. A provider has 10 business days from the effective date of the notice of termination to appeal the notice with the Central Office of the Department.

(b) The second level of an administrator review for a termination pending an appeal as described in OAR 411-375-0070 is performed by the Central Office of the Department. An administrator review by the Central Office of the Department is the only level of review before a hearing with the Department for an immediate termination described in OAR 411-375-0070.

(c) A written response of the outcome of an administrator review shall be sent to the personal support worker within 10 business days from the receipt of the request for an administrator review.

(d) If the administrator review determines that the decision to terminate the provider enrollment was unjustified, the provider enrollment for the personal support worker must be restored to active status and any earned benefits must be reinstated. The written response of the outcome of the administrator review must notify the personal support worker that the provider enrollment is restored.

### (5) OFFICE OF ADMINISTRATIVE HEARINGS.

(a) A personal support worker may file a request for a hearing with the Department if all levels of an administrator review have been exhausted and the personal support worker continues to dispute the decision to terminate the provider enrollment of the personal support worker.

(b) The request for a hearing must be filed with the Department within 30 calendar days of the written response of the administrator review by the Central Office of the Department as described in section (3) of this rule.

(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.

(d) An Administrative Law Judge (ALJ) with the Office of Administrative Hearings shall determine whether the decision from the administrator review to terminate the provider enrollment is affirmed or reversed. The ALJ shall issue a final order with the decision to all appropriate parties.

(e) No additional hearing rights have been granted to personal support workers by this rule other than the right to a hearing on the decision from the administrator review to terminate the provider enrollment of a personal support worker.

(6) BURDEN OF PROOF. The Department, CDDP, CIIS, or Support Services Brokerage 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.

(7) REQUEST FOR EXTENSION TO DEADLINE. The Department, CDDP, CIIS, Support Services Brokerage, or the personal support worker may request an extension of the 10-day deadline for circumstances beyond their control if further information needs to be gathered to make a decision or there is difficulty in scheduling a meeting between the parties.

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

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**Department of Human Services,  
Child Welfare Programs  
Chapter 413**

**Rule Caption:** Changing OARs affecting Child Welfare programs  
**Adm. Order No.:** CWP 13-2014(Temp)  
**Filed with Sec. of State:** 7-1-2014

# ADMINISTRATIVE RULES

**Certified to be Effective:** 7-1-14 thru 12-28-14

**Notice Publication Date:**

**Rules Amended:** 413-015-0115, 413-015-0409, 413-015-0415, 413-015-0420, 413-015-0432, 413-015-0540, 413-015-1105, 413-015-9040, 413-200-0414

**Subject:** The Department of Human Services, Office of Child Welfare Programs, is amending rules in chapter 413 to assure consistency with and correct errors in rules that were adopted effective May 27, 2014, which implemented a Differential Response (DR) system in Oregon and updated the Oregon Safety Model (OSM) practice, and to implement changes required in SB 1548 (2014) relating to health care practitioners authorized to perform child abuse medical assessments. Specifically:

OAR 413-015-0115, which defines terms used in Child Protective Services (CPS) rules, is amended to: (1) change the definition of “domestic violence” so it is not limited to individuals age 18 and over; and (2) correct the definition of “safe” to accurately state that safe means the absence of any threats.

OAR 413-015-0409 about exceptions to completing CPS assessment activities is amended to remove a requirement that no longer applies under the Department’s current electronic information system.

OAR 413-015-0415 about CPS assessment activities is amended to make the language in paragraph (10)(b)(B) consistent with changes to ORS 419B.023(4)(a) made by Senate Bill 1548, which becomes effective July 1, 2014.

OAR 413-015-0420 about making initial contact in a CPS assessment is amended to make language internally consistent. Changes to paragraph (2)(c)(B) that went into effect May 27, 2014 refer to a decision to delay interview of an alleged perpetrator; these amendments make the language in the same sentence about documenting the decision consistent.

OAR 413-015-0432 about developing safety plans is amended to correct an error. Section (6)(d) of the rule requires that an exception granted under subsection (2)(g) of the rule be documented; the exception was removed from subsection (2)(g) effective May 27, 2014, but the documentation requirement was inadvertently left in the rule.

OAR 413-015-0540 about making initial contact in an investigation of abuse or neglect in a day care facility is amended to make the language regarding assessment of safety consistent with other OSM rule changes that went into effect May 27, 2014.

OAR 413-015-1105, which describes the purpose of the rules about Access to Law Enforcement Data System (LEDS) in Local Child Welfare Offices, is amended to make the language about threats consistent with other OSM rule changes that went into effect May 27, 2014.

OAR 413-015-9040 about CPS assessments in counties that are implementing DR is amended to correct an error. When this rule was adopted effective May 27, 2014, an exception to determining if the family has moderate to high needs when the family is a Department-certified foster parent or relative caregiver was not included but should have been included, consistent with the rule about CPS assessments that applies in counties that are not implementing DR.

OAR 413-200-0414 about Department actions during screening of reports of abuse or neglect in the home of a Department-certified foster parent or relative caregiver is amended to update the agencies to which information is provided, and with whom the Department response is coordinated, when the young adult victim has a physical, developmental, or mental disability, consistent with changes to the CPS screening and assessment rules that went into effect May 27, 2014.

**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 initial safety plan or 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

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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) "Multi-disciplinary team" (MDT) means a county child abuse investigative team as defined in ORS 418.747.

(26) "Observable" means specific, real, can be seen and described. Observable does not include suspicion or gut feeling.

(27) "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.

(28) "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.

(29) "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.

(30) "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.

(31) "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.

(32) "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.

(33) "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.

(34) "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.

(35) "Protective custody" means custody authorized by ORS 419B.150.

(36) "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.

(37) "Referral" means a report that has been assigned for the purpose of CPS assessment.

(38) "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.

(39) "Reporter" means an individual who makes a report.

(40) "Safe" means there is an absence of present danger safety threats and impending danger safety threats.

(41) "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.

(42) "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.

(43) "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.

(44) "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.

(45) "Screener" means a Department employee with training required to provide screening services.

(46) "Screening" means the process used by a screener to determine the Department response when information alleging abuse or neglect is received.

(47) "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.

(48) "Substance" means any controlled substance as defined by ORS 475.005, prescription medications, over-the-counter medications, or alcoholic beverages.

(49) "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.

(50) "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.

(51) "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

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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.

(52) "Unsafe" means the presence of a present danger safety threat or an impending danger safety threat.

(53) "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.

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

## 413-015-0409

### Exception to Completing CPS Assessment Activities

(1) The only exception to completing the CPS assessment activities required by these rules (OAR 413-015-0400 to 413-015-0485) on an assigned referral is when a CPS worker, in consultation with a CPS supervisor or designee, determines prior to the initial contact (see 413-015-0420) that the referral does not require a CPS assessment because:

(a) The referral was opened in error; or

(b) There is no longer an allegation of abuse or neglect. The CPS worker received information after being assigned the referral and that information in combination with the corresponding screening report no longer constitutes a report of child abuse or neglect as defined in ORS 419B.005. This exception may be used only when the CPS worker and the CPS supervisor or designee determine the information:

(A) Is not from the alleged perpetrator;

(B) Relates directly to and specifically negates all allegations in the screening report; and

(C) Is considered on the basis of the objectivity of the individual providing the information and the quality of the information.

(2) The exception in section (1) of this rule is not permitted and a CPS assessment must be completed when the CPS worker has already made contact with the parent, caregiver, or alleged victim, unless the parent, caregiver, or alleged victim is the original reporter.

(3) The CPS worker must document the determination in the Department's electronic information system and explain the basis for the determination that a CPS assessment is not necessary.

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 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 13-2009, f. 10-1-09, cert. ef. 10-2-09; CWP 13-2009, f. 10-1-09, cert. ef. 10-2-09; 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

## 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

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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 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 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:

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(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 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 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 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

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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 Child Welfare Policy I-B.2.2.2, "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 Child Welfare Policy I-B.5.1, "HIV Testing of Children in Custody and HIV Confidentiality", 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.

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

## 413-015-0420

### Make Initial Contact

(1) The CPS worker must make an initial contact within the assigned response time line.

(2) The following outlines contacts the CPS worker is required to attempt and, when possible, compete at initial contact. The CPS worker must:

(a) Have face-to-face contact with and interview the alleged victim, his or her siblings, and other children living in the home. The purpose of the face-to-face contact and interview with the alleged victim, his or her siblings, and other children living in the home is to gather information regarding possible child abuse and neglect, gather information about the children's functioning and vulnerability, and assess the children's immediate safety.

(A) Interview and observe children as follows:

(i) The CPS worker must notify parents of the intent to interview a child, unless notification could compromise the child's safety.

(ii) The CPS worker must make diligent efforts to contact the child at home, school, day care, or any other place where the worker believes the child may be found. If the CPS worker is unsuccessful, the CPS worker must document in the Department's electronic information system all attempts made to contact the child and the dates of those attempted contacts.

(iii) When the CPS worker contacts the child at home and the parent or caregiver is not present:

(I) The CPS worker must consult with a CPS supervisor and seek assistance from LEA if the referral indicates there is reasonable cause to believe the child's health or safety is endangered by the conditions of the dwelling; or the child is inadequately supervised and there is an immediate need to evaluate the child's health and safety.

(II) The CPS worker must wait until the parent is present in the home to complete a child interview in the home if there is not reasonable cause to believe the child's health or safety is endangered by the conditions of the dwelling or that the child is inadequately supervised.

(iv) When the CPS worker is denied access to the child or to the child's residence, the CPS worker must, if the referral indicates that the child may be unsafe, request assistance from LEA in assessing the situation and in taking the child into protective custody if needed. If the referral indicates that the child is presently safe, the CPS worker must consider the following:

(I) Attempting to contact other persons who may have relevant information regarding the referral;

(II) Persisting in attempts to gain cooperation from the family or caregivers, depending on the known child safety information;

(III) Seeking LEA assistance;

(IV) Consulting with the CPS supervisor, the district attorney, assistant attorney general, or the county juvenile department to discuss possible juvenile court action; or

(V) Seeking a protective custody order from the juvenile court.

(v) The CPS worker must conduct interviews in a manner that assures privacy for the child.

(vi) If the parent or caregiver is the alleged perpetrator or if the presence of the parent or caregiver might impede the interview, the CPS worker must attempt to interview children outside the presence of their parents or caregivers.

(vii) A CPS worker must allow 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 abuse to have a personal representative be present during an interview. If a CPS worker believes that the personal representative would compromise the CPS assessment, the CPS worker may prohibit a personal representative from being present during the interview.

(viii) The CPS worker must observe the child's injuries or signs of neglect. The CPS worker may need to remove a child's clothing to make adequate observations. In that event, the CPS worker must:

(I) Use discretion and make the child as comfortable as possible.

(II) Seek parental consent and assistance, when possible and appropriate.

(III) Consider requesting a worker or other support person, who is the same gender as the child, be present to serve as a witness and provide comfort for the child.

(ix) The CPS worker may observe injuries to a child's anal or genital region if the child is not school aged and if the injury can be observed without the CPS worker touching the child's anal or genital region.

(B) The CPS worker must notify the parents or caregivers the same day a child is interviewed. If the same day notification could make a child or adult unsafe, a CPS supervisor may authorize an extension for one day to allow a planned notification that is less likely to compromise safety. The CPS worker must document in the Department's electronic information system the supervisory approval and an explanation describing the basis for the approval.

(b) Have face-to-face contact with and interview the non-offending parent or caregiver and all adults living in the home. The purpose of this face-to-face contact and interview is to find out what the non-offending parent or caregiver and other adults living in the home know about the alleged child abuse or neglect, gather information related to the safety of the child, including parent and caregiver functioning, and gather information to determine if the parent or caregiver can or cannot and will or will not protect the child.

(A) Whenever practicable, the CPS worker must interview both parents and caregivers in person, as follows:

(i) Interview each person in a manner that considers each person's privacy and safety and assures effective communication. This may require interviewing parents or caregivers individually and also together depending on the information being gathered;

(ii) Ask questions about domestic violence in separate interviews only; and

(iii) Provide all adults living in the home with a written notice that a criminal records check may be conducted on them.

(B) The CPS worker must provide each parent or caregiver with a "What you need to know about a Child Protective Services assessment" pamphlet, which includes written information regarding the CPS assessment process, including the court process and the rights of the parent and caregiver.

(C) The CPS worker must interview the non-custodial legal parent during the CPS assessment. This is not required during the initial contact,

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but must be completed as part of the assessment process because the non-custodial parent may have essential information or be a placement resource. If the interview of the non-custodial legal parent may make a child or adult unsafe, a CPS supervisor may authorize an exception to this requirement based on written documentation that supports the conclusion that an interview with a non-custodial legal parent should not be conducted.

(c) Have face-to-face contact with and interview the alleged perpetrator. Except as provided in this subsection, the CPS worker must make face-to-face contact with and interview the alleged perpetrator during the initial contact when he or she is the child's custodial parent, caregiver, any person living in the home, or is present in the home when the CPS worker makes contact. The purpose of this interview is to evaluate the alleged perpetrator's reaction to allegations of abuse or neglect as well as to the child and his or her condition, and to gather further information about the alleged perpetrator and the family in relation to the safety of the child. When the alleged perpetrator is a minor parent, the purpose is also to determine if the minor parent is an alleged victim of abuse (under paragraph (D) of this subsection).

(A) The CPS worker is not required to make face-to-face contact with or interview the alleged perpetrator during the initial contact if:

(i) The alleged perpetrator is not a custodial parent, caregiver, anyone living in the home, or is not present in the home when the CPS worker makes contact and delaying contact will not compromise child safety. The CPS worker still must interview the alleged perpetrator, but may complete the interview during the course of the CPS assessment; or

(ii) There is a criminal investigation and the interview cannot be coordinated with an LEA within the time lines for initial contact.

(B) The decision to delay interview of an alleged perpetrator as provided in subparagraphs (A)(i) or (ii) of this subsection must be approved by a CPS supervisor, and the CPS worker must document in the Department's electronic information system both the approval and the reason for delaying the interview.

(C) When interviewing the alleged perpetrator, the CPS worker must:

(i) Coordinate the interviews of the alleged perpetrator with LEA when law enforcement is conducting an investigation;

(ii) Consult with a CPS supervisor if an interview with the alleged perpetrator could make a child or adult unsafe;

(iii) Provide the alleged perpetrator with a written notice that a criminal records check may be conducted on them; and

(iv) Make inquiries about the employment status of the alleged perpetrator. If 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 (DHS) or OYA, the CPS worker must notify a CPS supervisor. The CPS supervisor must confirm the person's employee status by contacting a Central Office Field Services representative. If the CPS supervisor determines the alleged perpetrator is an employee of the DHS or OYA, the CPS supervisor must notify the DHS Office of Human Resources at the time of the assessment and at the time the assessment is reviewed as required in OAR 413-015-0475. The CPS supervisor must document the notifications in the Department's electronic information system.

(D) When interviewing the alleged perpetrator who is a minor and the parent of the alleged victim, the CPS worker must ask questions to determine if there is an allegation of abuse or neglect with the minor parent as an alleged victim. If it is determined that there is an allegation of abuse or neglect with the minor parent as an alleged victim, the information must be reported to a screener.

(E) When interviewing an alleged perpetrator who is the parent or caregiver, the CPS worker must provide the parent or caregiver with a "What you need to know about a Child Protective Services assessment" pamphlet, which includes written information regarding the CPS assessment process, including the court process and the rights of the parent and caregiver.

(3) Gather safety-related information through interviews and observation. The CPS worker must begin to gather safety-related information through interviews and observation as outlined in OAR 413-015-0422, "Gather Safety Related Information through Interview and Observation".

(4) Determine if there is a present danger safety threat or impending danger safety threat. During the initial contact, the CPS worker must determine, based on the information obtained at that time, if there is a present danger safety threat or impending danger safety threat to the child as outlined in OAR 413-015-0425, "Determine if there is a Present Danger Safety Threat or Impending Danger Safety Threat".

(5) Documentation of the Initial Contact. The CPS worker must document the dates of attempted and successful contacts in the Department's

electronic information system. If it was not possible during the initial contact for the CPS worker to successfully complete a required contact, the CPS worker must document why contact was not made and must complete the face-to-face contact and interview as soon as possible.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 147.425, 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 2-2008, f. & cert. ef. 4-1-08; CWP 15-2009, f. & cert. ef. 11-3-09; CWP 2-2010(Temp), f. & cert. ef. 2-12-10 thru 8-11-10; 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

## 413-015-0432

### Develop Safety Plans

(1) When a present danger safety threat or impending danger safety threat is identified, a CPS worker must put a safety plan in place to manage the threat. There are three types of safety plans: the protective action plan which manages present danger safety threats, and the initial safety plan and the ongoing safety plan, which manage impending danger safety threats.

(2) Shared requirements for a protective action plan, initial safety plan, or ongoing safety plan:

(a) When developing a protective action plan, initial safety plan, or ongoing safety plan, the CPS worker must:

(A) Assure the plan focuses on and controls the identified present danger safety threat or impending danger safety threat;

(B) Not use a parent or caregiver who is the alleged perpetrator of physical abuse, sexual abuse, or domestic violence to provide protection or any other adult who was aware of the threats to child safety and did not protect;

(C) Include safety service providers that have been confirmed to be suitable to provide safety for the child (refer to OAR 413-015-1200 through 413-015-1230, "Assessment of an Individual as a Safety Service Provider");

(D) Involve the child's parent or caregiver;

(E) Use the Indian child's tribe as a resource, unless the tribe declines, when the CPS worker knows or has reason to know the child is an Indian child; and

(F) Assure it has been approved by a Department supervisor.

(b) The protective action plan, initial safety plan, or ongoing safety plan, whether in-home or out-of-home, must:

(A) Be a written document between the parent or caregiver and the Department;

(B) Provide a detailed description of the present danger safety threat or impending danger safety threat;

(C) Describe how identified present danger safety threats or impending danger safety threats will be managed, including:

(i) If impending danger safety threats will be managed in-home, an explanation of how the in-home criteria outlined in (2)(c)(B) of this rule were met;

(ii) If impending danger safety threats will be managed out-of-home, an explanation of how the in-home criteria outlined in (2)(c)(B) of this rule were not met; and

(iii) How the plan will be monitored.

(D) Explain how the plan is the least intrusive means that can effectively manage the identified threat occurring within the particular family;

(E) Identify the safety service providers and the safety services necessary to implement the plan;

(F) Establish the time commitments and availability of those involved in the plan; and

(G) Include conditions for return when an out-of-home initial safety plan or out-of-home ongoing safety plan is developed.

(c) The CPS worker must determine whether the impending danger safety threat will be managed with an in-home or out-of-home initial safety plan or ongoing safety plan by determining how the impending danger safety threat is occurring and applying the in-home safety plan criteria.

(A) The CPS worker must understand how the impending danger safety threat is occurring as required in OAR 413-015-0428, "Identify How the Impending Danger Safety Threat is Occurring", and use the information about how the impending danger safety threat is occurring to develop the least intrusive plan that can manage the identified impending danger safety threat occurring within the particular family;

(B) An in-home initial safety plan or in-home ongoing safety plan is required when all of the following in-home safety plan criteria are met:

(i) There is a home-like setting where the parent and child live.

(ii) The home is calm enough to allow safety service providers access and activities to occur.

(iii) At least one parent is willing to cooperate with the plan.

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(iv) The necessary safety activities and resources are available to implement the plan.

(C) An out-of-home initial safety plan or out-of-home ongoing safety plan is required when any of the in-home safety plan criteria outlined in (B)(i) through (iv) above are not met.

(d) A protective action plan, initial safety plan, or ongoing safety plan may be a combination of in-home and out-of-home in order to assure the least intrusive intervention.

(e) The CPS worker must make modifications to the protective action plan, initial safety plan, or ongoing safety plan, as necessary, to continue to control the identified present danger safety threats or impending danger safety threats.

(f) When assessing an allegation of sexual abuse, if a plan includes a parent or caregiver, who is the alleged perpetrator, consenting to leave the family home, the CPS worker must notify the local district attorney responsible for the MDT in the county where the child resides that a plan of this type has been developed, pursuant to ORS 418.800. The notice must:

(A) Be in writing; and

(B) Be provided within three business days of the date the parent or caregiver leaves the family home.

(g) When a plan includes a parent or caregiver, who is the alleged perpetrator, consenting to leave the family home without their children or have their children leave the family home without them, the CPS worker must, in consultation with a supervisor, file a petition alleging the child is within the jurisdiction of the juvenile court pursuant to ORS 419B.100 within 10 calendar days of the date the parent or caregiver or their children leave the home if the plan is still necessary to assure child safety and will continue to be necessary for the immediate future.

(3) Additional Requirements for a Protective Action Plan. Refer to OAR 413-015-0435, "Develop a Protective Action Plan", for additional requirements when developing a protective action plan.

(4) Additional Requirements for an Initial Safety Plan. Refer to OAR 413-015-0437, "Develop an Initial Safety Plan", for additional requirements when developing an initial safety plan.

(5) Additional Requirements for an Ongoing Safety Plan. Refer to OAR 413-015-0450, "Develop an Ongoing Safety Plan", for additional requirements when developing an ongoing safety plan.

(6) Documentation. The CPS worker must provide a detailed description of the protective action plan, initial safety plan, or ongoing safety plan developed to manage the present danger safety threat or impending danger safety threat. Documentation must be completed in the Department's electronic information system within five business days following the identification of the threat and must include:

(a) All requirements outlined in paragraphs (2)(b)(A) through (G) of this rule;

(b) A summary of the parents' and caregivers' agreement to and acceptance of the plan; and

(c) The date the plan was reviewed by a supervisor and the name of the supervisor who reviewed it.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 409.185, 418.005, 418.015 & 419B.005 - 419B.050

Hist.: 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

## 413-015-0540

### Make Initial Contact

The CPS worker must make an initial contact within the assigned response time line with the alleged child victim's custodial parent or caregiver and the alleged child victim as follows:

(1) As required by OAR 413-015-0420, notify the custodial parents or caregivers of the intent to interview an alleged child victim.

(2) Have face-to-face contact with and interview the alleged child victim or victims. The purpose of the face-to-face contact and each interview is to gather information regarding possible child abuse, observe any signs of neglect or child injuries, determine if there are other alleged child victims, and assess the immediate safety of the child or children.

(3) Have face-to-face contact with and interview each custodial parent or caregiver of the alleged child victim or victims. The purpose of this face-to-face contact and interview is to find out what the parent or caregiver knows about the alleged child abuse or neglect and to gather information about their ability and willingness to protect.

Stat. Auth.: ORS 409.050 & 418.005

Stats. Implemented: ORS 409.185, 418.015, 418.747 & 419B.005 - 419B.050

Hist.: 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 13-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14

## 413-015-1105

### Purpose

(1) The primary purposes of LEDS access in local Child Welfare offices are to assist staff in making decisions about child safety, specifically related to child protective services, assessing safety service providers, and emergency certification as outlined in these rules (OAR 413-015-1100 to 413-015-1125). Criminal history information obtained from LEDS will be considered, along with other safety-related information, to:

(a) Identify present danger safety threats and impending danger safety threats; or

(b) Determine if behavior that is revealed by criminal history is inconsistent with providing care to children or having access to children.

(2) These rules do not address criminal records checks for non-emergency certification or adoption approval. Criminal records checks for non-emergency certification or adoption approval are governed by OAR 413-120-0400 to 413-120-0470.

Stat. Auth.: ORS 181.537, 409.050 & 418.005

Stats. Implemented: ORS 181.537, 409.010, 418.005 & 419B.020

Hist.: CWP 1-2005(Temp), f. & cert. ef. 1-28-05 thru 7-27-05; CWP 8-2005, f. & cert. ef. 7-28-05; CWP 3-2007, f. & cert. ef. 3-20-07; CWP 5-2010(Temp), f. & cert. ef. 6-15-10 thru 12-12-10; CWP 21-2010, f. & cert. ef. 11-15-10; CWP 13-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14

## 413-015-9040

### Assessment

(1) Except as provided in this rule, CPS workers in DR implementation counties must comply with OAR 413-015-0400 through 413-015-0485.

(2) Overview. The following outlines the primary components of all CPS assessments and the components unique to traditional response assessment and alternative response assessment.

(a) Completing a CPS assessment, whether traditional response assessment or alternative response assessment, involves all of the following:

(A) Making efforts to schedule the initial contact when a response timeline of "within five calendar" days is assigned.

(B) Making face-to-face contact with the alleged victim, his or her siblings, his or her parent or caregiver, other children and adults living in the home, and the alleged perpetrator.

(C) Accessing and viewing the home environment.

(D) Gathering safety-related information through interviews and observation.

(E) Determining if there is a present danger safety threat.

(F) Determining if there is an impending danger safety threat by applying the safety threshold criteria:

(i) Imminent;

(ii) Observable;

(iii) Vulnerable child;

(iv) Out of control; and

(v) Severity.

(G) Developing a protective action plan when a child is determined to be unsafe due to a present danger safety threat.

(H) Developing an initial safety plan when a child is determined to be unsafe due to an impending danger safety threat.

(I) Developing an ongoing safety plan when a child is determined to be unsafe from an impending danger safety threat at the conclusion of a CPS assessment.

(J) Determining whether the initial safety plan or ongoing safety plan is the least intrusive plan sufficient to manage child safety by identifying how the impending danger safety threat is occurring and applying the in-home safety plan criteria.

(K) Developing conditions for return when an out-of-home initial safety plan or out-of-home ongoing safety plan is established.

(L) Determining whether a family has moderate to high needs when a child is determined to be safe.

(M) Referring a family for a strengths and needs assessment and subsequently for community services when a family is determined to have moderate to high needs and accepts the referrals.

(b) In addition to the components of a CPS assessment outlined in paragraphs (a)(A) through (M) of this section, completing a traditional response assessment includes determining if there is reasonable cause to believe that child abuse or neglect occurred.

(c) In addition to the components of a CPS assessment outlined in paragraphs (a)(A) through (M) of this section, completing an alternative response assessment includes offering the family the option of having a community partner accompany the worker when a response timeline of "within five calendar" days is assigned.

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(3) Make Initial Contact. When completing a traditional response assessment or an alternative response assessment the CPS worker must comply with OAR 413-015-0420, "Make Initial Contact", and the additional requirements outlined in this section when a response timeline of "within five calendar days" is assigned:

(a) The CPS worker must make efforts to schedule the initial contact; and

(b) The CPS worker must, when completing an alternative response assessment:

(A) Offer the family the option of having a community partner accompany the worker on initial contact;

(B) Obtain a release of information signed by the parent or caregiver specific to the identified community partner; and

(C) Document, if applicable, whether the CPS worker completed the initial contact with a community partner. When a community partner was not present at initial contact, the CPS worker must document why a community partner was not present. When a community partner was present, the CPS worker must document which community partner was present.

(4) Change from Alternative Response Assessment to Traditional Response Assessment. When changing the type of CPS assessment from alternative response assessment to traditional response assessment the CPS worker must:

(a) Assure one of the following applies:

(A) Any of the criteria outlined in 413-015-9030(3)(a)(A)(i) through (vi);

(B) A referral is received on an open alternative response assessment within 60 days of the date the open assessment was assigned and the new referral meets the screening criteria to assign as a traditional response assessment;

(C) The CPS worker filed a petition alleging the child is within the jurisdiction of the juvenile court pursuant to ORS 419B.100; or

(D) The CPS worker determined the child is unsafe at the conclusion of the CPS assessment and an ongoing safety plan will be established and the case will be opened for services.

(b) Assure the decision is approved by a Department supervisor; and

(c) Document in the Department's electronic information system the decision to change from alternative response assessment to traditional response assessment and explain the basis for the decision.

(5) Make Child Safety Decision and Determine Whether to Open a Case. The CPS worker must comply with the requirements outlined in this section which replaces OAR 413-015-0445, "Child Safety Decision".

(a) After all the necessary information is gathered for the CPS assessment and the disposition has been determined, the CPS worker must determine if the child is safe or unsafe at the conclusion of the CPS assessment. To make a child safety decision at the conclusion of a CPS assessment, the CPS worker must again determine if an impending danger safety threat is present as outlined in OAR 413-015-0425, "Determine if there is a Present Danger Safety Threat or an Impending Danger Safety Threat".

(b) When at the conclusion of the CPS assessment the CPS worker determines one or more impending danger safety threats are present, including a previously identified impending danger safety threat that has not been eliminated, the CPS worker must conclude the child is unsafe. When the CPS worker concludes the child is unsafe at the conclusion of the CPS assessment, the CPS worker must:

(A) Determine how the impending danger safety threat is occurring to support the development of an ongoing safety plan as outlined in OAR 413-015-0428, "Identify How the Impending Danger Safety Threat is Occurring";

(B) Develop an ongoing safety plan as outlined in 413-015-0450, "Develop an Ongoing Safety Plan";

(C) Complete the CPS assessment; and

(D) Open a case.

(c) When at the conclusion of the CPS assessment the CPS worker determines no present danger safety threats or impending danger safety threats are present and any identified previously have been eliminated, the CPS worker must conclude the child is safe. When the CPS worker concludes the child is safe at the conclusion of the CPS assessment, the CPS worker must:

(A) Dismiss the protective action plan or initial safety plan if one is in place; and

(B) Determine if the family has moderate to high needs unless completing a CPS assessment involving the home of a Department certified foster parent or relative caregiver.

(d) When the CPS worker determines the family does not have moderate to high needs the CPS worker must complete and close the CPS assessment.

(e) When the CPS worker determines the family does have moderate to high needs, the CPS worker must offer the family the option to have a strengths and needs assessment completed by a strengths and needs assessment provider:

(A) If the family declines the offer to have a strengths and needs assessment completed the CPS worker must:

(i) Offer the family referrals to relevant non-contracted community services as available;

(ii) If the family accepts the offer, the CPS worker must refer the family to relevant non-contracted community services as available; and

(iii) Complete and close the CPS assessment.

(B) If the family accepts the offer to have a strengths and needs assessment completed the CPS worker must:

(i) Refer the family to a strengths and needs assessment provider;

(ii) Meet with the family and the strengths and needs assessment provider after the completion of the strengths and needs assessment, discuss contracted and non-contracted community service referral options, offer relevant community service referrals as available, and identify the family's preferences;

(iii) If the family accepts the offer for community service referrals, refer the family to relevant contracted or non-contracted community services as available.

(C) Complete and close the CPS assessment.

(f) The CPS worker must document in the Department's electronic information system the child safety decision including all of the following:

(A) If the child is safe and the assessment will be closed, or if the child is unsafe and the case will be opened.

(B) If the child is safe:

(i) Whether the family was determined to have moderate to high needs and the basis for the determination;

(ii) Whether the family accepted or declined to participate in a strengths and needs assessment and if they declined whether the family accepted the offer for relevant non-contracted community service referrals;

(iii) Whether the family accepted or declined to participate in services recommended as the result of the strengths and needs assessment; and

(iv) If applicable, what contracted or non-contracted community services were declined or accepted.

(6) CPS Assessment Documentation, Supervisory Review Requirements, and Extensions.

(a) The CPS worker must comply with OAR 413-015-0475, "CPS Assessment Documentation and Supervisory Review Requirements", with the exception of section (2) which this subsection replaces. The CPS worker must complete the CPS assessment and electronically submit the CPS assessment for review by a CPS supervisor, within 45 days of the day that the information alleging child abuse or neglect is received by the screener, except as provided in subsection (b) of this section.

(b) This subsection replaces OAR 413-015-0480, "CPS Assessment Extensions". The CPS supervisor may approve a one-time extension of an additional 15 days for completion of the CPS assessment if the supervisor has confirmed critical information (information necessary to determine child safety or a child abuse or neglect disposition) is outstanding or, if applicable, the strengths and needs assessment is not complete. Additional extension of time may be approved by the Child Welfare program manager if the ability to obtain critical information is beyond the reasonable control of the CPS worker.

Stat. Auth: ORS 409.027, 409.050, 418.005 & 418.598

Stats. Implemented: ORS 409.010, 409.185, 418.005, 418.015, 418.580 & 419B.020

Hist.: 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

## 413-200-0414

### Department Actions During Screening

(1) Screener Actions.

(a) When a screener receives information involving the home of a certified family, the screener must:

(A) Refer to and follow Child Welfare Policy I-AB.2, "Screening", OAR 413-015-0200 to 413-015-0225 to gather and share information;

(B) Consult with the CPS supervisor before determining the Department's response;

(C) Notify the assigned caseworker of each child or young adult placed in the home, each assigned caseworker's supervisor, the assigned certifier, and the certifier's supervisor of all information received; and

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(D) If the information is closed at screening as described in Child Welfare Policy I-AB.2, "Screening", OAR 413-015-0210(4):

(i) Document the information in provider case notes in the Department's information system; and

(ii) Notify the individuals listed in paragraph (C) of this subsection that the information was closed at screening.

(b) When a screener receives information alleging abuse or neglect of a young adult living in the home of a certified family, the screener must provide the information to the young adult's caseworker; and

(A) Provide the information to the Department's Aging and People with Disabilities Division local office, Community Developmental Disabilities Program, or Community Mental Health Program when the young adult is an individual with a diagnosed physical, developmental, or mental disability, respectively; or

(B) Provide the information to law enforcement.

(2) **Certifier Actions.** When the assigned certifier is notified by a screener that information involving the home of a certified family was closed at screening, the certifier must examine the information received and follow Child Welfare Policy II-B.1.1., "Responsibilities for Certification and Supervision of Foster Parents and Relative Caregivers and Approval of Potential Adoptive Resources" (OAR 413-200-0270 to 413-200-0296).

(3) **Assigned Caseworker Actions.**

(a) When a report of information alleging abuse or neglect of a young adult has been shared with the Department's Aging and People with Disabilities Division local office, Community Developmental Disabilities Program, or Community Mental Health Program because the young adult is an individual with a diagnosed physical, developmental, or mental disability, the young adult's caseworker must coordinate the Department's response.

(b) When a report of information alleging abuse or neglect of a young adult has been shared with law enforcement, the young adult's caseworker must coordinate the Department's response with law enforcement.

(c) When a report is received alleging that a child or young adult in substitute care in the home of a certified family may have been subjected to abuse or neglect, and the screener determines that the report constitutes a report of child abuse or neglect as defined in ORS 419B.005, within three business days of the Department's receipt of the report, the caseworker of the child or young adult in substitute care who is the alleged victim must notify the following individuals that a report was received:

(A) The attorney for the child or young adult;

(B) The court appointed special advocate (CASA) for the child or young adult;

(C) The parents of the child or young adult;

(D) Any attorney representing the parents of the child or young adult; and

(E) If the disclosure is authorized by ORS 419B.035, others who are involved in the case plan as necessary.

(d) The notification of the parents of the child or young adult and any attorney representing the parents of the child or young adult in paragraphs (3)(c)(C) and (D) of this rule is not required if the notification may interfere with an investigation or assessment or jeopardize the safety of the child or young adult. The CPS supervisor, or the supervisor of a caseworker of the child or young adult may authorize an exception to the requirement to provide notification based on documentation that supports this conclusion.

Stat. Auth.: ORS 409.050 & 418.005

Stats. Implemented: ORS 409.185, 418.005, 418.015, 419B.015 & 419B.020

Hist.: CWP 33-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 15-2008, f. 6-27-08, cert. ef. 6-28-08; CWP 17-2011(Temp), f. & cert. ef. 9-1-11 thru 2-28-12; CWP 38-2011, f. 12-27-11, cert. ef. 1-3-12; CWP 13-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14

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## Department of Human Services, Self-Sufficiency Programs Chapter 461

**Rule Caption:** Changing OARs relating to eligibility for JOBS Participation Incentive (JPI)

**Adm. Order No.:** SSP 14-2014(Temp)

**Filed with Sec. of State:** 6-26-2014

**Certified to be Effective:** 6-26-14 thru 12-23-14

**Notice Publication Date:**

**Rules Amended:** 461-001-0000, 461-101-0010, 461-135-1260, 461-170-0011

**Subject:** OAR 461-001-0000 about definitions in chapter 461 and OAR 461-101-0010 about program acronyms and overview are being amended to change the definition of a parent for JOBS Par-

ticipation Incentive (JPI). This amendment supports expanding JPI to include two-parent working families.

OAR 461-135-1260 about JOBS Participation Incentive (JPI) is being amended to include two-parent working families and set out when these families are eligible for this incentive.

OAR 461-170-0011 about changes that must be reported is being amended to expand those receiving JOBS Participation Incentive (JPI) to include families in the change reporting system (CRS).

**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 SDDS), or any other agency formerly part of the Department of Human Services shall be taken to mean the Department of Human Services (DHS), except:

(a) The rule in which reference occurs only regulates programs covered by Chapter 461 of the Oregon Administrative Rules.

(b) OCCS medical program eligibility rules are set out in the 410-200 division of Oregon Administrative Rules.

(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, sexual assault, or stalking.

(3) "Adjusted income" means the amount determined by subtracting income deductions from countable income (see OAR 461-140-0010). Specific rules on the deductions are found in division 461-160.

(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 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 and benefit level for the payment month.

(10) "Cafeteria plan" means a written benefit plan offered by an employer in which:

(a) All participants are employees; and

(b) Participants can 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 Services 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, 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. 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, REF, SFPSS, and TANF programs, a dependent child's father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or

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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 who meets the requirements of one of the following paragraphs:

(A) Is one of the following relatives of the dependent child:

(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 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 child's subsequent adoption).

(14) "Certification period" means the period for which a client 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 who is:

(A) Under the age of 18; or

(B) Under the age of 22 and attending full time secondary, post secondary or vocational-technical training designed to prepare the individual for employment.

(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 disabled people 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 — People 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 REF, REFM, and TANF programs, means the following:

(a) An individual who is not a caretaker relative 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 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, 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 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 the client, as specified in a case plan, intended to promote the ability of one or both parents to achieve or maintain family stability.

(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) "Income producing property" means any real or personal property that generates income for the financial group. 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, condominiums.

(35) "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.

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(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 living in a nonstandard living arrangement, for the purposes of calculating the correct divisor in OAR 461-140-0296, the month in which the client would have been eligible had it not been for the disqualifying transfer of assets.

(36) "In-kind income" means income in a form other than money (such as food, clothing, cars, furniture, and payments made to a third party).

(37) "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.

(38) "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 his or her life, certain rights to that property. In addition, a life estate is established when a member of the financial group (see OAR 461-110-0530) purchases a life estate interest in the home of another individual.

(39) "Lodger" means a member of the household group (see OAR 461-110-0210) who:

(a) Is not a member of the filing group; and

(b) Pays the filing group for room and board.

(40) "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).

(41) "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.

(42) "Marriage" means the union of two individuals who are legally married.

(43) "Microenterprise" means a sole proprietorship, partnership, or family business with fewer than five employees and capital needs no greater than \$35,000.

(44) "Minor parent", in the ERDC, REF, REFM, and TANF programs, means a parent under the age of 18.

(45) "Nonstandard living arrangement" is defined as follows:

(a) In the GA, GAM, OSIP, OSIPM, and QMB programs, a client is considered to be in a nonstandard living arrangement when the client is applying for or receiving services in any of the following locations:

(A) A nursing facility in which the client 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.

(46) "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.

(47) "OCCS Medical Programs" refers to programs for which eligibility policy can be found in division 410-200 of Oregon Administrative Rule, and includes CEC, CEM, MAA, MAF, EXT, OHP, Substitute Care, BCCTP, and MAGI Medicaid/CHIP programs, including:

(a) MAGI Child;

(b) MAGI Parent or Other Caretaker Relative;

(c) MAGI Pregnant Woman; and

(d) MAGI CHIP.

(48) "Ongoing month" means one of the following:

(a) For all programs except the SNAP program, any month following the initial month 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 following the initial month of eligibility.

(49) "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.

(50) "Payment month" means, for all programs except EA, the calendar month for which benefits are issued.

(51) "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.

(52) "Periodic income" means income received on a regular basis less often than monthly.

(53) "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, and QMB programs: the client or client's spouse.

(e) For the REF and REFM programs: the applicant, caretaker, caretaker relative, or parent.

(54) "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 client was a resident in Oregon on January 1, 2008 or later; or

(b) Issued in another state while the client 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.

(55) "Real property" means land, buildings, and whatever is erected on or affixed to the land and taxed as real property.

(56) "Reimbursement" means money or in-kind compensation provided specifically for an identified expense.

(57) "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.

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(58) “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.

(59) “Shelter in kind” means an agency or person outside the financial group (see OAR 461-110-0530) provides the shelter of the financial group, or makes a payment to a third party for some or all of the shelter costs 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.

(60) “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.

(61) “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 (see OAR 461-110-0530).

(62) “Spouse” means an individual who is legally married to another individual.

(63) “Stable income” means income that is the same amount each time it is received.

(64) “Standard living arrangement” means a location that does not qualify as a nonstandard living arrangement.

(65) “Teen parent” means, for TANF and JOBS, a parent under the age of 20 who has not completed a high school diploma or GED.

(66) “Timely continuing benefit decision notice” means a decision notice that informs the client of the right to continued benefits and is mailed no later than the time requirements in OAR 461-175-0050.

(67) “Trust funds” mean money, securities, or similar property held by a person or institution for the benefit of another person.

(68) “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.

(69) “Variable income” means earned or unearned income that is not always received in the same amount each month.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.816, 412.006, 412.014, 412.049  
Stats. Implemented: ORS 411.060, 411.070, 411.404, 411.816, 412.001, 412.006, 412.014, 412.049

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

## 461-101-0010

### Program Acronyms and Overview

(1) Acronyms are frequently used when referring to a program. There is an acronym for each umbrella program and acronyms for each subprogram.

(2) When no program acronym appears in a rule in Chapter 461 of these rules, the rule with no program acronym applies to all programs listed in this rule. If a rule does not apply to all programs, the rule uses program acronyms to identify the programs to which the rule applies.

(3) Wherever an umbrella acronym appears, that means the rule covers all the subprograms under that code.

(4) CAWEM; Citizen/Alien-Waived Emergent Medical. Medicaid coverage of emergent medical needs for clients who are not eligible for other medical programs solely because they do not meet citizenship and alien status requirements.

(5) DSNAP; Disaster Supplemental Nutrition Assistance Program. Following a presidential declaration of a major disaster in Oregon, DSNAP provides emergency DSNAP program benefits to victims. OAR 461-135-0491 to 461-135-0497 cover DSNAP eligibility and benefits.

(6) EA; Emergency Assistance. Emergency cash to families without the resources to meet emergent needs.

(7) ERDC or ERDC-BAS; Employment Related Day Care-Basic. Helps low-income working families pay the cost of child care.

(8) GA; General Assistance. Cash assistance to low-income individuals with disabilities who do not have dependent children.

(9) GAM; General Assistance Medical. Medical assistance to clients who are eligible for the GA program but have not been found eligible for OSIPM benefits.

(10) HSP; Housing Stabilization Program. A program that helps low-income families obtain stable housing. The program is operated through the Housing and Community Services Department through community-based, service-provider agencies. The Department’s rules for the program (OAR 461-135-1305 to 461-135-1335) were repealed July 1, 2001.

(11) JOBS; Job Opportunity and Basic Skills. An employment program for REF, REFM, and TANF clients. JOBS helps these clients attain self-sufficiency through training and employment. The program is part of Welfare Reform.

(12) JOBS Plus. Provides subsidized jobs rather than SNAP or TANF benefits. For TANF clients, JOBS Plus is a component of the JOBS Program; for SNAP clients and noncustodial parents of children receiving TANF, it is a separate employment program. Eligibility for TANF clients, SNAP clients, and noncustodial parents of children receiving TANF is determined by the Department. Eligibility for UI recipients is determined by the Oregon State Employment Department. When used alone, JOBS Plus includes only clients whose JOBS Plus program participation is through the Department of Human Services. JOBS Plus administered through the Oregon State Employment Department is known in chapter 461 of the Oregon Administrative Rules as Oregon Employment Department UI JOBS Plus. The following acronyms are used for specific categories:

(a) TANF-PLS; Clients eligible for JOBS Plus based on TANF.

(b) SNAP-PLS; Clients eligible for JOBS Plus based on SNAP.

(c) NCP-PLS; Noncustodial parents of children receiving TANF.

(13) JPI; Job Participation Incentive. An additional \$10 food benefit to help increase the ability of parents with children, that meet federal TANF participation rate, to meet the nutritional needs of their families.

(14) LIS; Low-Income Subsidy. The Low-Income Subsidy program is a federal assistance program for Medicare clients who are eligible for extra help meeting their Medicare Part D prescription drug costs.

(15) OFSET. The Oregon Food Stamp Employment Transition Program, which helps SNAP program benefit recipients find employment. This program is mandatory for some SNAP program benefit recipients.

(16) OSIP; Oregon Supplemental Income Program. Cash supplements and special need payments to persons who are blind, disabled, or 65 years of age or older. When used alone, OSIP refers to all OSIP programs. The following acronyms are used for OSIP subprograms:

(a) OSIP-AB; Oregon Supplemental Income Program — Aid to the Blind.

(b) OSIP-AD; Oregon Supplemental Income Program — Aid to the Disabled.

(c) OSIP-EPD; Oregon Supplemental Income Program — Employed Persons with Disabilities program. This program provides Medicaid coverage for employed persons with disabilities with adjusted income less than 250 percent of the Federal Poverty Level.

(d) OSIP-OAA; Oregon Supplemental Income Program — Old Age Assistance.

(17) OSIPM; Oregon Supplemental Income Program Medical. Medical coverage for elderly and disabled individuals. When used alone, OSIPM refers to all OSIP-related medical programs. The following codes are used for OSIPM subprograms:

(a) OSIPM-AB; Oregon Supplemental Income Program Medical — Aid to the Blind.

(b) OSIPM-AD; Oregon Supplemental Income Program Medical — Aid to the Disabled.

(c) OSIPM-EPD; Oregon Supplemental Income Program Medical — Employed Persons with Disabilities program. This program provides Medicaid coverage for employed persons with disabilities with adjusted income less than 250 percent of the Federal Poverty Level.

(d) OSIPM-OAA; Oregon Supplemental Income Program Medical — Old Age Assistance.

(e) OSIPM-IC; Oregon Supplemental Income Program Medical — Independent Choices

(18) The Post-TANF program provides a monthly transitional payment to employed clients who are no longer eligible for the Pre-TANF or TANF programs due to earnings, and meet the other eligibility requirements.

(19) The Pre-TANF program is an up-front assessment and resource-search program for TANF applicant families. The intent of the program is to assess the individual’s employment potential; determine any barriers to

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employment or family stability; develop an individualized case plan that promotes family stability and financial independence; help individuals find employment or other alternatives; and provide basic living expenses immediately to families in need.

(20) QMB; Qualified Medicare Beneficiaries. Programs providing payment of Medicare premiums and one program also providing additional medical coverage for Medicare recipients. Each of these programs also is considered to be a Medicare Savings Program (MSP). When used alone in a rule, QMB refers to all MSP. The following codes are used for QMB subprograms:

(a) QMB-BAS; Qualified Medicare Beneficiaries — Basic. The basic QMB program.

(b) QMB-DW; Qualified Medicare Beneficiaries — Disabled Worker. Payment of the Medicare Part A premium for people under age 65 who have lost eligibility for Social Security disability benefits because they have become substantially gainfully employed.

(c) QMB-SMB; Qualified Medicare Beneficiaries — Specified Limited Medicare Beneficiary. Payment of the Medicare Part B premium only. There are no medical benefits available through QMB-SMB.

(d) QMB-SMF; Qualified Medicare Beneficiaries — Qualified Individuals. Payment of the Medicare Part B premium only. There are no medical benefits available through QMB-SMF. This program has a 100-percent federal match, but also has an allocation that, if reached, results in the closure of the program.

(21) REF; Refugee Assistance. Cash assistance to low-income refugee singles or married couples without children.

(22) REFM; Refugee Assistance Medical. Medical coverage for low-income refugees.

(23) The Repatriate Program helps Americans resettle in the United States if they have left a foreign land because of an emergency situation.

(24) SAC; Medical Coverage for Children in Substitute or Adoptive Care.

(25) SFDNP; Senior Farm Direct Nutrition Program. Food vouchers for low income seniors. Funded by a grant from the United States Department of Agriculture.

(26) SFPSS; State Family Pre-SSI/SSDI Program. A voluntary program providing cash assistance and case management services to families when at least one TANF eligible adult in the household has an impairment (see OAR 461-125-0260) and is or will be applying for Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI).

(27) SNAP; Supplemental Nutrition Assistance Program. Helps low-income households maintain proper nutrition by giving them the means to purchase food. SNAP used to be known as FS or Food Stamps, any reference to SNAP also includes FS and Food Stamps.

(28) TA-DVS; Temporary Assistance for Domestic Violence Survivors. Addresses the needs of clients threatened by domestic violence.

(29) TANF; Temporary Assistance for Needy Families. Cash assistance for families when children in those families are deprived of parental support because of continued absence, death, incapacity, or unemployment.

Stat. Auth.: ORS 411.060, 411.404, 411.706, 411.816, 412.014, 412.049, 414.025, 414.231  
Stats. Implemented: ORS 411.060, 411.404, 411.704, 411.706, 411.816, 412.014, 412.049, 414.025, 414.231, 414.826, 414.831, 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 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 35-1992, f. 12-31-92, cert. ef. 1-1-93; AFS 16-1993, f. & cert. ef. 9-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; 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 17-1996, f. 4-29-96, cert. ef. 5-1-96; 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 9-1997, f. & cert. ef. 7-1-97; AFS 4-1998, f. 2-25-98, cert. ef. 3-1-98; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 25-1998, f. 12-18-98, 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; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 11-2001, f. 6-29-01, cert. ef. 7-1-01; 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; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 7-2003, f. & cert. ef. 4-1-03; 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 7-2005, f. & cert. ef. 7-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 8-2006, f. & cert. ef. 6-1-06; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; 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 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 29-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; 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 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 9-2012, f. 3-29-12, cert. ef. 4-1-12; SSP 22-2013(Temp), f. & cert. ef. 8-23-13 thru 2-19-14; 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 14-2014(Temp), f. & cert. ef. 6-26-14 thru 12-23-14

## 461-135-1260

### Specific Requirements: Job Participation Incentive

(1) This rule explains specific requirements of the Job Participation Incentive (JPI). The JPI food benefit provides \$10 per month for qualifying SNAP households with a dependent child (see OAR 461-001-0000) under age 18.

(2) An individual eligible for JPI may receive a \$10 monthly food benefit.

(a) The individual receives the \$10 incentive payment starting the month the Department receives documentation that all enrollment criteria in section (3) of this rule have been met.

(b) There are no partial months of JPI benefits.

(c) The individual may only be issued retroactive JPI benefits as allowed under OAR 461-180-0130.

(3) As used in this rule, a “two-parent household” refers to a SNAP filing group (see OAR 461-110-0370) that contains a dependent child and the dependent child’s two parents.

(4) To receive JPI, an individual must be in a SNAP filing group and meet the requirements of all of the following subsections:

(a) Be working at an unsubsidized paid employment that meets the federally required participation rates (see OAR 461-001-0025). For self-employment or piece rate work, the hours of work must be equivalent to the required average weekly hours at Oregon State minimum wage. An individual must meet the requirements of at least one of the following paragraphs:

(A) Be a single parent (see OAR 461-001-0000) of a dependent child under six years of age and working at an unsubsidized paid employment for an average of at least 20 weekly hours.

(B) Be a single parent of a dependent child at least six years of age and under 18 years of age, and working at an unsubsidized paid employment for an average of at least 30 weekly hours.

(C) Be a parent in a two-parent household (see section (3) of this rule) that does not receive federally-funded child care assistance, and the parents are working at an unsubsidized paid employment for a combined average of at least 35 hours per week.

(D) Be a parent in a two-parent household that receives federally-funded child care assistance and the parents are working at an unsubsidized paid employment for a combined average of 55 hours per week.

(b) Provide the Department with employer-produced documents of paid, unsubsidized work hours covering a consecutive two-week period that has occurred within the last 60 days.

(c) Anticipate weekly employment hours will remain the same or increase for the reporting period.

(d) Provide employer-produced documents of paid, unsubsidized work hours each time requested by the Department and no later than the last day of the sixth month following the date the client provides the verification of work hours in accordance with subsections (a) and (b) of this section.

(e) Be an eligible adult in a SNAP benefit group (see OAR 461-110-0750) and the parent of an eligible dependent child under age 18 in the same SNAP benefit group.

(f) Not be receiving any Post-TANF, SFPSS, or TANF program benefits in the same month.

(5) To remain eligible for JPI, a client must:

(a) Meet all SNAP eligibility and reporting requirements (see OAR 461-170-0011); and

(b) Meet all requirements in section (3) of this rule at the time of the interim change report and at the time of the recertification of SNAP benefits.

(6) Household income in JPI is calculated in accordance with all SNAP financial rules.

(7) A client is no longer eligible for JPI when it has been determined that the client does not meet federally required participation rates and requirements due to any of the following:

(a) Loss of employment.

(b) A reduction in work hours.

(c) The client no longer has a dependent child under age 18 in their SNAP benefit group.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 412.049

Stats. Implemented: ORS 409.010, 411.060, 411.070, 412.049

Hist.: 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 19-2012(Temp), f. 5-23-12, cert. ef. 5-24-12 thru 10-28-12; SSP 30-2012, f. 9-28-12, cert. ef. 10-1-12; SSP 14-2014(Temp), f. & cert. ef. 6-26-14 thru 12-23-14

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## 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 client 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 client receives the new or changed payment.

(3) A client must report, orally or in writing, the following changes:

(a) In the ERDC program:

(A) A client not participating in SRS in the SNAP program must report the following changes within 10 days of occurrence:

(i) A change in child care provider.

(ii) A change in employment status.

(iii) A change in mailing address or residence.

(iv) A change in membership of the filing group (see OAR 461-110-0350).

(v) A change in source of income expected to continue.

(B) A client participating in SRS in the SNAP program must report the following changes by the tenth day of the month following the month of occurrence:

(i) A change in child care provider.

(ii) Loss of employment.

(iii) Monthly income exceeding the SNAP countable income limit.

(iv) A parent (see OAR 461-001-0000) of a child or unborn or the spouse of the caretaker moves into the residence.

(C) The ERDC case may continue to follow the reporting requirements in paragraph (3)(a)(B) of this rule without a companion SNAP case in SRS when:

(i) The ERDC case was certified in the fifth or sixth month of the SNAP certification period (see OAR 461-001-0000); and

(ii) The SNAP companion case automatically closes because the Interim Change Report (see OAR 461-170-0010) was not received.

(b) In the SNAP program:

(A) A client 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) A client assigned to SRS must report when the filing group's monthly income exceeds the SNAP countable income limit by the tenth day of the month following the month of occurrence.

(C) A client assigned to TBA is not required to report any changes.

(c) For JPI (see OAR 461-135-1260), a client 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 a client must report all changes that may affect eligibility 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) A change in resources.

(G) A change in source or amount of income.

(e) In the REF, SFPSS, and TANF programs, clients 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, clients 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 411.060, 411.070, 411.404, 411.706, 411.816, 412.014, 412.049, 414.231  
Stats. Implemented: ORS 411.060, 411.070, 411.081, 411.404, 411.704, 411.706, 411.816, 412.014, 412.049, 414.025, 414.231, 414.826, 414.831

Hist.: AFS 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; SSP 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

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**Rule Caption:** Changing OARs affecting public assistance, medical assistance, or Supplemental Nutrition Assistance Program clients

**Adm. Order No.:** SSP 15-2014

**Filed with Sec. of State:** 7-1-2014

**Certified to be Effective:** 7-1-14

**Notice Publication Date:** 5-1-2014

**Rules Amended:** 461-001-0000, 461-025-0301, 461-110-0210, 461-110-0350, 461-110-0410, 461-110-0530, 461-115-0016, 461-115-0050, 461-115-0230, 461-120-0010, 461-135-0832, 461-135-0835, 461-140-0020, 461-140-0040, 461-145-0340, 461-145-0380, 461-160-0550, 461-160-0551, 461-160-0620, 461-165-0180, 461-170-0010, 461-180-0090, 461-190-0211

**Rules Repealed:** 461-001-0000(T), 461-101-0010(T), 461-110-0350(T), 461-165-0180(T), 461-190-0211(T)

**Subject:** OAR 461-001-0000 about definitions for Chapter 461 is amended to change the definition of "lodger" to support the proposed amendment to OAR 461-145-0340 which follows federal policy by including income from lodgers who pay only for the room, counting room rental income based on the number of rooms and other expenses, and by treating this income as unearned income. This rule is also amended to change the definition of "Initial month" to clarify that for current long-term care clients (as distinct from new applicants), the initial month for purposes of determining the divisor should be the date the individual applied for long-term care rather than public assistance in Oregon in general.

OAR 461-025-0301 about lay representation in contested case hearings is amended to comply with ORS 183.452 by improving its description of the current use of lay representatives by the Department as approved by the Oregon Department of Justice. The revised rule indicates that it covers public assistance services; medical benefits; SNAP terminations, reductions, suspensions and denials; intentional program violations; provider enrollment, provider overpay-

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ments, audits, and audit sanctions; and estate administration hardship waivers.

OAR 461-110-0210 is amended to expand the definition of who is considered in the household group by clarifying that a person who is absent to care for an emergent need of an individual related to an illness, injury, or death or absent and anticipated to return within 90 days, is still considered part of the household group. This rule is also amended to remove its reference to "SAC", to medical coverage for children in substitute or adoptive care which is obsolete. Eligibility for coverage for out-of-state children placed in an Oregon facility is now primarily determined by the Oregon Health Authority's Office of Client and Community Services (OCCS) for medical programs under rules that were moved from OAR chapter 461 to OCCS rules in OAR chapter 410 effective 10/1/13 (such as OAR 410-200-0015, 410-200-0405, 410-200-0510). Additional eligibility for medical coverage for Oregon children in substitute care and in the custody of the Department are set out in Child Welfare rules in OAR chapter 413-100-0410 – 413-100-0460.

OAR 461-110-0350 about the filing group for the Employment Related Day Care (ERDC) program is amended to permanently adopt a temporary rule change from January 8, 2014, aligning this rule with changes to OAR 461-001-0000 that revised the definition of "spouse". The prior definition of "spouse" included exceptions for the ERDC program that were removed in order to align with other program rules and to clarify who must be considered as a "spouse".

OAR 461-110-0410 about filing groups is amended to clarify how to determine filing groups in the OSIPM program. Filing groups consist of the individuals whose circumstances are considered in the eligibility determination process.

OAR 461-110-0530 about financial groups is amended to clarify how to determine financial groups in the OSIPM program. Generally, financial groups consist of the individuals whose income and resources the Department considers in determining eligibility.

OAR 461-115-0016 about the application process and reservation list for the Employment Related Day Care (ERDC) program is amended to permanently adopt a temporary rule change effective January 1, 2014, adding additional exemptions under which families would not be placed on the reservation list. Under this amendment, new ERDC applicants who have an open Child Welfare case or open CPS assessment meet an exception to the ERDC reservation list, if the child care subsidy is part of a safety plan needed to prevent child removal, allow a child to return home, or 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. The amendment to this rule aligns with Oregon's differential response and the federal guidelines for at risk children.

OAR 461-115-0050 about when an application must be filed is amended to indicate that the Department does not determine eligibility for the Oregon Supplemental Income Program Medical (OSIPM) or the Qualified Medicare Beneficiary (QMB) programs using the application that was used to determine eligibility for other Department programs the individual is currently receiving. The rule is also amended to update terminology to clarify the scope of the rule.

OAR 461-115-0230 about interviews is amended to set out the Department's policy that interviews are required in the OSIPM and QMB programs at application and redetermination for individuals who are not assumed eligible.

OAR 461-120-0010 about residency requirements is amended to remove references to EXT (Extended Medical), HKC (Healthy Kids Connect), MAA (Medical Assistance Assumed), MAF (Medical Assistance to Families), OHP (Oregon Health Plan) and SAC (Substitute or Adoptive Care). The eligibility requirements for these programs are now under OAR 410-200, except that eligibility for medical coverage for children in substitute care and in the custody of the Department is also covered in OAR 413.

OAR 461-135-0832 about definitions used in estate administration rules is amended to add applicable statutory citations; add a definition of "Department" to clarify that it includes the Department of

Human Services, the Oregon Health Authority, or both; replace the definition of "blind child" with "child with visual impairment"; replace the definition of "disabled child" with "child with disability"; add a definition of "domestic partner" that complies with ORS 106.310; change the definition of "estate" to identify assets that are subject to estate recovery claims for medical assistance only, and replaced reference to "assistance" with "medical assistance," so as to implement proposed amendments to OAR 461-135-0835; remove the superfluous use of the word "surviving"; add definitions for "general assistance" and "medical assistance"; add a definition for "probate estate" to implement proposed amendments to OAR 461-135-0835 listing the types of assets that are subject to an estate recovery claim for non-medical assistance programs; and add definition for "Medicare cost sharing" to implement proposed amendments to OAR 461-135-0835.

OAR 461-135-0835 regarding estate claims is amended to implement a change to Oregon's State Plan regarding estate recovery of Medicaid, a legislative change to estate recovery of the state's monthly contribution for Medicare Part D prescription drug coverage, clarify estate recovery under each program subject to estate recovery, and include in the rule various existing policies regarding estate recovery. These amendments designate the Estate Administration Unit to administer estate recovery programs for the Oregon Health Authority and the Department of Human Services; implement a change in the Oregon State Plan limiting estate recovery of medical assistance benefits paid on or after October 1, 2013; clarify what is included in a claim for the several estate recovery programs mandated by statute; clarify when estate recovery claims are deferred or not enforced for the several estate recovery programs mandated by statute; clarify what assets or interest in assets of a deceased recipient are subject to estate recovery claims for the several estate recovery programs mandated by statute; implement a statutory change regarding estate recovery of the state's monthly contribution to the federal government for Medicare Part D prescription coverage for individuals receiving Medicare and medical assistance; implement existing policy regarding recovery of overpayments from the estates of deceased recipients for medical assistance, GA, and OSIP; implement existing policy regarding recognition of same sex married couples and same sex registered domestic partners for estate recovery and the GA and OSIP programs, and implement existing policy regarding recognition of same sex married couples for estate recovery of medical assistance; implement existing policy regarding the set aside of transfers of assets for inadequate consideration by recipients; and implement existing policy regarding the maximum distribution from "special needs trusts", and that distributions from the trusts are still payable if the deceased recipient is survived by a spouse, minor child, child with a disability, or a child with a visual impairment.

OAR 461-140-0020 about availability of resources is amended to address how to treat non-liquid resources in the OSIPM and QMB medical programs, correcting an inadvertent error made during a previous amendment.

OAR 461-140-0040 about availability of income is amended to align with federal policy about disregarding a portion of certain income sources withheld to repay a previous overpayment of that same source of income, if double-counting will occur.

OAR 461-145-0340 about lodger income is amended to revise how lodger income is treated in the GA, GAM, OSIP, OSIPM, and QMB programs.

OAR 461-145-0380 about pension and retirement plans is amended to align with federal policy regarding the exclusion of pension and retirement plans owned by the non-applying spouse of individuals in standard living situations.

OAR 461-160-0550 and 461-160-0551 about income deductions in the OSIP and OSIPM programs are amended to clarify how to calculate adjusted income for married individuals. The proposed changes clarify that a married applicant/recipient must be income-

# ADMINISTRATIVE RULES

eligible as an individual, and that there is no need to proceed with further calculations if that is not the case.

ORAR 461-160-0620 about income deductions and liability for OSIPM clients in long-term care is amended to reflect the federal changes in the amounts used when calculating the maintenance needs allowance and the dependent income allowance deducted from the income of an institutionalized spouse that are effective July 1, 2014.

ORAR 461-165-0180 about eligibility of child care providers is amended to increase child care provider standards, including permanently adopting temporary rule changes effective March 1 and April 1, 2014. This applies to providers that care for individuals receiving child care benefits through the Employment Related Day Care (ERDC) program or Temporary Assistance to Needy Families Jobs Opportunities and Basic Skills (TANF-JOBS) program. This amendment also indicates that halfway houses are not eligible locations for subsidized child care; modifies the scope and specifies the implementation of the new training requirements for care providers who are License Exempt or Registered Family Child Care Providers for individuals receiving child care benefits through the Employment Related Day Care (ERDC) program or Temporary Assistance to Needy Families Jobs Opportunities and Basic Skills (TANF-JOBS) program; and requires providers registered or licensed by the Child Care Division to complete and submit a new listing form every two years, or sooner at the request of the Department, so that the Department may review the provider's eligibility.

ORAR 461-170-0010 about client reports concerning changes in circumstances is amended to clarify that for the ERDC and SNAP programs, when multiple changes in circumstances are reported at the same time, all actions must be taken at the time of reporting and given the same effective date.

ORAR 461-180-0090 about effective dates for initial month medical benefits is amended to remove an obsolete reference to Healthy KidsConnect (HKC) medical. Starting January 1, 2014, HKC clients were moved into the MAGI CHIP program.

ORAR 461-190-0211 about case plan activities and standards for support services is amended to make permanently adopt a temporary rule change effective March 5, 2014, allowing the department to issue support services to an individual who has become over-income for the Temporary Assistance for Needy Families (TANF) program due to earnings in a TANF/Job Opportunity and Basic Skills (JOBS) program on-the-job training activity. Under this rule amendment, the Department may issue support services to such individuals 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, and only while the individual continues to participate in the on-the-job training activity.

In addition, some of the above rules were amended to reflect new Department terminology and to 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 shall be taken to mean the Department of Human Services (DHS), except:

(a) The rule in which reference occurs only regulates programs covered by chapter 461 of the Oregon Administrative Rules.

(b) OCCS medical program eligibility rules are set out in the 410-200 division of Oregon Administrative Rules.

(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, sexual assault, or stalking.

(3) "Adjusted income" means the amount determined by subtracting income deductions from countable income (see ORAR 461-140-0010). Specific rules on the deductions are found in division 461-160.

(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 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 and benefit level for the payment month.

(10) "Cafeteria plan" means a written benefit plan offered by an employer in which:

(a) All participants are employees; and

(b) Participants can 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, 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. 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, REF, 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 who meets the requirements of one of the following paragraphs:

(A) Is one of the following relatives of the dependent child:

(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 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 child's subsequent adoption).

(14) "Certification period" means the period for which a client 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 ORAR 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.

# ADMINISTRATIVE RULES

(c) In the OSIPM and QMB programs, child means an unmarried individual living with a parent 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.

(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 disabled people 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 — People 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 REF, REFM, and TANF programs, means the following:

(a) An individual who is not a caretaker relative 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 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, 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 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 the client, as specified in a case plan, intended to promote the ability of one or both parents to achieve or maintain family stability.

(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) "Income producing property" means any real or personal property that generates income for the financial group. 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, condominiums.

(35) "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, for the purposes of calculating the correct divisor in OAR 461-140-0296, the month in which the client would have been eligible had it not been for the disqualifying transfer of assets.

(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 services if the client would have been eligible had it not been for the disqualifying transfer of assets.

(36) "In-kind income" means income in a form other than money (such as food, clothing, cars, furniture, and payments made to a third party).

(37) "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

## ADMINISTRATIVE RULES

(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.

(38) "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 his or her life, certain rights to that property. In addition, a life estate is established when a member of the financial group (see OAR 461-110-0530) purchases a life estate interest in the home of another individual.

(39) "Lodger" means a member of the household group (see OAR 461-110-0210) who:

- (a) Is not a member of the filing group; 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.

(40) "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).

(41) "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.

(42) "Marriage" means the union of two individuals who are legally married.

(43) "Microenterprise" means a sole proprietorship, partnership, or family business with fewer than five employees and capital needs no greater than \$35,000.

(44) "Minor parent", in the ERDC, REF, REFM, and TANF programs, means a parent under the age of 18.

(45) "Nonstandard living arrangement" is defined as follows:

(a) In the GA, GAM, OSIP, OSIPM, and QMB programs, a client is considered to be in a nonstandard living arrangement when the client is applying for or receiving services in any of the following locations:

(A) A nursing facility in which the client 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 non-standard living arrangement.

(b) In all programs except GA, GAM, OSIP, OSIPM, and QMB, non-standard 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.

(46) "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.

(47) "OCCS Medical Programs" refers to programs for which eligibility policy can be found in division 410-200 of Oregon Administrative Rule, and includes CEC, CEM, MAA, MAF, EXT, OHP, Substitute Care, BCCTP, and MAGI Medicaid/CHIP programs, including:

- (a) MAGI Child;
- (b) MAGI Parent or Other Caretaker Relative;
- (c) MAGI Pregnant Woman; and
- (d) MAGI CHIP.

(48) "Ongoing month" means one of the following:

(a) For all programs except the SNAP program, any month following the initial month 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 following the initial month of eligibility.

(49) "Parent" for all programs except the SNAP program, 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.

(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.

(50) "Payment month" means, for all programs except EA, the calendar month for which benefits are issued.

(51) "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.

(52) "Periodic income" means income received on a regular basis less often than monthly.

(53) "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, and QMB programs: the client or client's spouse.

(e) For the REF and REFM programs: the applicant, caretaker, caretaker relative, or parent.

(54) "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 client was a resident in Oregon on January 1, 2008 or later; or

(b) Issued in another state while the client 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.

(55) "Real property" means land, buildings, and whatever is erected on or affixed to the land and taxed as real property.

(56) "Reimbursement" means money or in-kind compensation provided specifically for an identified expense.

(57) "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.

(58) "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.

(59) "Shelter in kind" means an agency or person outside the financial group (see OAR 461-110-0530) provides the shelter of the financial group, or makes a payment to a third party for some or all of the shelter costs 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.

(60) "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.

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(61) “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 (see OAR 461-110-0530).

(62) “Spouse” means an individual who is legally married to another individual.

(63) “Stable income” means income that is the same amount each time it is received.

(64) “Standard living arrangement” means a location that does not qualify as a nonstandard living arrangement.

(65) “Teen parent” means, for TANF and JOBS, a parent under the age of 20 who has not completed a high school diploma or GED.

(66) “Timely continuing benefit decision notice” means a decision notice that informs the client of the right to continued benefits and is mailed no later than the time requirements in OAR 461-175-0050.

(67) “Trust funds” mean money, securities, or similar property held by a person or institution for the benefit of another person.

(68) “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.

(69) “Variable income” means earned or unearned income that is not always received in the same amount each month.

Stat. Auth: ORS 411.060, 411.070, 411.404, 411.816, 412.006, 412.014 & 412.049  
Stats. Implemented: ORS 411.060, 411.070, 411.404, 411.816, 412.001, 412.006, 412.014 & 412.049  
Hist.: AFS 28-1978, f. & cert. 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

## 461-025-0301

### Lay Representation in Contested Case Hearings

(1) Subject to the approval of the Attorney General, an officer or employee of the Department of Human Services (Department) is authorized to appear on behalf of the Department in the following types of hearings conducted by the Office of Administrative Hearings:

(a) Public assistance, including but not limited to eligibility for services available through a waiver or state plan or other benefits, the level and amount of services or benefits, effective date, and the termination, suspension, reduction, or denial of services or benefits;

(b) Medical assistance, including but not limited to eligibility for services available through a waiver or state plan for medical assistance or other medical benefits, the level and amount of services or benefits, effective date, prior authorizations, medical management decisions, and the termination, suspension, reduction, or denial of services or benefits;

(c) Employment Related Day Care, including child care provider overpayments and intentional program violations;

(d) Eligibility for Supplemental Nutrition Assistance Program (SNAP), the level and amount of benefits, effective date, and the termination, suspension, reduction, or denial of benefits;

(e) Client overpayments and intentional program violations, related to public assistance or medical assistance, SNAP, waived service benefits or medical benefits or services;

(f) Provider enrollment or denial of enrollment, provider overpayments, audits, and audit sanctions; and

(g) Estate administration hardship waivers.

(2) The Department’s representative may not make legal argument on behalf of the Department.

(a) “Legal argument” includes arguments on:

(A) The jurisdiction of the Department to hear the contested case;

(B) The constitutionality of a statute or rule or the application of a constitutional requirement to the Department; and

(C) The application of court precedent to the facts of the particular contested case proceeding.

(b) “Legal argument” does not include presentation of motions, evidence, examination and cross-examination of witnesses, or presentation of factual arguments or arguments on:

(A) The application of the statutes or rules to the facts in the contested case;

(B) Comparison of prior actions of the Department in handling similar situations;

(C) The literal meaning of the statutes or rules directly applicable to the issues in the contested case;

(D) The admissibility of evidence; and

(E) The correctness of procedures being followed in the contested case hearing.

(3) When an officer or employee appears on behalf of the Department, the administrative law judge shall advise the Department’s representative of the manner in which objections may be made and matters preserved for appeal. Such advice is of a procedural nature and does not change applicable law on waiver or the duty to make timely objection.

(4) If the administrative law judge determines that statements or objections made by the Department representative appearing under section (1) of this rule involve legal argument as defined in this rule, the administrative law judge shall provide reasonable opportunity for the Department representative to consult the Attorney General and permit the Attorney General to present argument at the hearing or to file written legal argument within a reasonable time after conclusion of the hearing.

(5) The Department is subject to the Code of Conduct for Non-Attorney Representatives at Administrative Hearings, which is maintained by the Oregon Department of Justice and available on its website at <http://www.doj.state.or.us>. A Department representative appearing under section (1) of this rule must read and be familiar with it.

Stat. Auth.: ORS 409.050, 411.060, 411.404, 411.816, 412.014 & 412.049  
Stats. Implemented: ORS 183.452, 409.010, 411.060, 411.404, 411.816, 412.014 & 412.049  
Hist.: SSP 32-2012(Temp), f. & cert. ef. 10-5-12 thru 4-3-13; SSP 8-2013, f. & cert. ef. 4-1-13; SSP 15-2014, f. & cert. ef. 7-1-14

## 461-110-0210

### Household Group

(1) This rule describes who is included in the household group. The household group generally consists of the individuals who live together with or without the benefit of a dwelling. For homeless people, the household group consists of the individuals who consider themselves living together.

(2) A separate dwelling is not recognized for the purpose of determining the members of a household group unless the living space has, separate from any other dwelling, an access to the outside that does not pass through another dwelling, a functional sleeping area, bathroom, and kitchen facility.

(3) Each individual in the household group who applies for benefits is an applicant. The household group and applicants form the basis for determining who is in the remaining eligibility groups.

(4) For all programs except the SNAP program, a separate household group is established for individuals who live in the same dwelling as another household group, if all the following subsections are true:

(a) There is a landlord-tenant relationship between the two household groups in which the tenant is billed by the landlord at fair market value (see OAR 461-001-0000) for housing.

(b) The tenant lives independently from the landlord.

(c) The tenant:

(A) Has and uses sleeping, bathroom, and kitchen facilities separate from the landlord; or

(B) Shares bathroom or kitchen facilities with the landlord, but the facilities are in a commercial establishment that provides room or board or both for compensation at fair market value.

(5) Individuals who live with more than one household group during a calendar month are members of the household group in which they spend more than half of their time, except as follows:

(a) In the ERDC program, if a child (see OAR 461-001-0000) lives with different caretakers during the month, the child is considered a member of both household groups.

(b) In the TANF program:

(A) If a parent (see OAR 461-001-0000) sleeps at least 30 percent of the time during the calendar month in the home of the dependent child (see 461-001-0000), the parent is in the same household group as the dependent child.

(B) A dependent child is included in the household group with the caretaker relative (see OAR 461-001-0000), who usually has the major responsibility for care and control of the dependent child, if the dependent child lives with two household groups in the same calendar month for at least one of the following reasons:

(i) Education.

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(ii) The usual caretaker relative is gone from the household for part of the month because of illness.

(iii) A family emergency.

(c) In the SNAP program:

(A) The individual is a member of the household group that provides the individual more than half of his or her 21 weekly meals. If the individual is a child, the child is a member of the household group credited with providing the child more than half of his or her 21 weekly meals. A household group is credited with providing breakfast and lunch for each day the child departs that group's home for school, even if the child eats no breakfast or lunch at that home.

(B) During the month in which a resident of a domestic violence shelter (see OAR 461-001-0000) enters the domestic violence shelter, the resident may be included both in the household group he or she left and in a household group in the domestic violence shelter.

(6) In the OSIPM program, individuals receiving or applying for home and community-based care (see OAR 461-001-0030) or nursing facility care are each an individual household group regardless of others living in the individual's dwelling or facility.

(7) Individuals absent from the household for 30 days or more are no longer part of the household group, except for the following:

(a) In all programs except the SNAP program, an individual in an acute care medical facility remains in the household group unless the individual enters long-term care.

(b) In the ERDC, REF, REFM, and TANF programs:

(A) A caretaker relative who is absent for up to 90 days while in a residential alcohol or drug treatment facility is in the household group.

(B) A child who is absent for 30 days or more is in the household group if the child is:

(i) Absent for illness (unless the child is in a long-term care Title XIX facility), social service, or educational reasons;

(ii) In foster care, but expected to return to the household within the next 30 days.

(c) In the ERDC program, an individual in the household group who is--

(A) Absent because of education, training, or employment, including long-haul truck driving, fishing, or active duty in the U.S. armed forces;

(B) Absent to care for an emergent need of an individual related to illness, injury, or death; or

(C) Absent but reasonably anticipated to return within 90 days.

(d) In the REFM program, in a two-parent household, a parent remains in the household group if the requirements of both of the following paragraphs are met:

(A) The parent is absent because of education, training or employment — including absence while working or looking for work outside the area of his or her residence, such as long-haul truck driving, fishing, or active duty in the U.S. armed forces; and

(B) The other parent remains in the home.

(e) In the REF and TANF programs when a filing group includes more than one caretaker relative (see OAR 461-001-0000), a caretaker relative in the household group who is absent because of education, training, or employment — including absence while working or looking for work outside the area of his or her residence, such as long-haul truck driving, fishing, or active duty in the U.S. armed forces.

(8) In the OSIP-EPD and OSIPM-EPD programs, the household group consists only of the individual applying for or receiving benefits.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.706, 411.816, 412.049, 414.231

Stats. Implemented: ORS 411.060, 411.070, 411.404, 411.704, 411.706, 411.816, 412.001, 412.049, 414.025, 414.231, 414.826, 414.831, 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 2-1994, f. & cert. ef. 2-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 4-1998, f. 2-25-98, cert. ef. 3-1-98; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 3-1999, f. 3-31-99, cert. ef. 4-1-99; AFS 5-1999(Temp), f. & cert. ef. 4-1-99 thru 6-30-99; AFS 9-1999, f. & cert. ef. 7-1-99; 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 19-2001, f. 8-31-01, cert. ef. 9-1-01; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 29-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10; SSP 38-2007, 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 10-2011, f. 3-31-11, cert. ef. 4-1-11; 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 37-2013, f. 12-31-13, cert. ef. 1-1-14; SSP 15-2014, f. & cert. ef. 7-1-14

## 461-110-0350

### Filing Group; ERDC

In the ERDC program:

(1) The *filing group* consists of each of the following applicants and household group (see OAR 461-110-0210) members, even if the individual does not meet nonfinancial eligibility requirements:

(a) The caretaker (see OAR 461-001-0000) of the child for whom ERDC benefits are requested, except this does not apply to a child care provider caring for the child of an individual:

(A) Who is a member of a National Guard or U.S. Armed Forces Reserve unit; and

(B) Who has been called to active duty away from the child's home for more than 30 days.

(b) An unmarried child and any sibling (see OAR 461-001-0000), less than 18 years of age or 18 years of age and attending secondary school or vocational training at least half time, in the care and custody of the caretaker. A foster child is included if the caretaker wants to include the child in the need group (see OAR 461-001-0000).

(c) Any parent (see OAR 461-001-0000) of a child required to be in the filing group.

(d) Any parent of an unborn child, if the sibling of the unborn child is required to be in the filing group.

(e) The spouse (see OAR 461-001-0000) of the caretaker.

(2) A minor parent (see OAR 461-001-0000) may form a separate filing group with his or her dependent child or children when the minor parent applies as the caretaker.

Stat. Auth.: ORS 409.050 & 411.060

Stats. Implemented: ORS 409.010 & 411.060

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 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; SSP 32-2003(Temp), f. & cert. ef. 12-17-03 thru 3-31-04; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 5-2009, f. & cert. ef. 4-1-09; SSP 10-2011, f. 3-31-11, cert. ef. 4-1-11; SSP 1-2014(Temp), f. & cert. ef. 1-8-14 thru 7-7-14; SSP 15-2014, f. & cert. ef. 7-1-14

## 461-110-0410

### Filing Group; OSIP, OSIPM, QMB

(1) In the OSIPM program (except OSIPM-EPD), for applicants who live in a *standard living* arrangement (see OAR 461-001-0000), the filing group consists of each applicant and the following household members:

(a) The spouse (see OAR 461-001-0000) of an applicant.

(b) Each parent (see OAR 461-001-0000) of a child (see OAR 461-001-0000), if the child is applying and not assumed eligible.

(2) In the OSIPM program (except OSIPM-EPD), when individuals live in a nonstandard living arrangement (see OAR 461-001-0000), the filing group consists only of the individual applying for benefits.

(3) In the OSIPM-EPD program, the filing group consists only of the individual applying for benefits.

(4) In the QMB program, whether in a standard living arrangement or a nonstandard living arrangement, the filing group consists of each applicant and the following household members:

(a) The spouse of an applicant.

(b) Each parent of a *child*, if the child is applying and not assumed eligible.

(c) Each child of the applicant, if the applicant wants to include the child in the need group (see OAR 461-110-0630).

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.706

Stats. Implemented: ORS 411.060, 411.070, 411.404, 411.706

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 1-1993, f. & cert. ef. 2-1-93; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; 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 11-2001, f. 6-29-01, cert. ef. 7-1-01; SSP 22-2004, f. & cert. ef. 10-1-04; 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 10-2011, f. 3-31-11, cert. ef. 4-1-11; SSP 15-2014, f. & cert. ef. 7-1-14

## 461-110-0530

### Financial Group

(1) Except as provided in section (4) of this rule, the "financial group" consists of the filing group members whose income and resources the Department considers in determining eligibility (see OAR 461-001-0000) and benefits.

(2) In the ERDC, GA, OSIPM-EPD, QMB, and SNAP programs, the "financial group" consists of each individual in the filing group.

(3) In the REF and REFM programs, the "financial group" consists of each individual in the filing group, except the following:

(a) 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 (see OAR 461-110-0630); and

(b) An individual who is eligible for and receives an SSI cash payment.

(4) In the OSIPM (except OSIPM-EPD) program:

(a) For the purposes of this section of this rule, "ineligible" means an individual not eligible to receive either SSI or TANF program benefits.

(b) When an individual lives in a standard living arrangement (see OAR 461-001-0000):

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(A) Except as provided in paragraph (B) of this subsection, each member of the filing group is in the “financial group”.

(B) When an individual, whose eligibility is not determined under certain protected groups (see OAR 461-135-0771 to 461-135-0830), is married, not assumed eligible (see 461-135-0010) for OSIPM, and the individual’s spouse (see 461-001-0000) is considered ineligible (see subsection (a) of this section):

(i) If the individual’s adjusted income (see OAR 461-001-0000) using the deductions allowed under OAR 461-160-0550(4) is greater than the OSIPM program adjusted income standard for a need group of one under 461-155-0250, the individual is in his or her own “financial group” and not eligible for OSIPM.

(ii) When there are children in the home, if the ineligible spouse’s remaining countable income (see OAR 461-001-0000) after allocation (see 461-160-0551) to each ineligible child is equal to or less than the difference between the couple and the individual SSI standards: the spouse is not included in the “financial group” when determining income eligibility; however, the spouse is included in the “financial group” when determining resource eligibility.

(iii) When there are no children in the home, if the ineligible spouse’s countable income is less than the difference between the couple and the individual SSI standards: the spouse is not included in the “financial group” when determining income eligibility; however, the spouse is included in the “financial group” when determining resource eligibility.

(c) When an individual lives in a nonstandard living arrangement (see OAR 461-001-0000), the “financial group” consists only of the individual applying for benefits, except that the community spouse (see 461-001-0030) is included in the “financial group” to determine initial eligibility. At initial eligibility, the resources of the community spouse are considered and the provisions of 461-160-0580 apply. The income of the community spouse is not considered in determining initial eligibility, and the community spouse is not included in any other eligibility group.

(5) In the TANF program, the “financial group” consists of each individual in the filing group except the following:

(a) A caretaker relative, other than a parent, who chooses not to be included in the need group and has income less than the non-needy countable income limit standard (see OAR 461-155-0030) for the filing group of the caretaker relative;

(b) The spouse of a caretaker relative, when the caretaker relative meets the requirements under subsection (a) of this section;

(c) A dependent child of a caretaker relative when the caretaker relative meets the requirements under subsection (a) of this section;

(d) An individual in the filing group solely due to the requirements of OAR 461-110-0310(2)(b); and

(e) An individual who is eligible for and receives an SSI cash payment.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.706, 411.816, 412.006, 412.049, 412.064, 412.124, 414.231, 414.712

Stats. Implemented: ORS 411.060, 411.070, 411.404, 411.816, 412.006, 412.049, 412.064, 412.124, 414.025, 414.231, 414.712, 414.826, 414.831, 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 19-1993, f. & cert. ef. 10-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; 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 24-1997, f. 12-31-97, cert. ef. 1-1-98; 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 17-2008, f. & cert. ef. 7-1-08; SSP 8-2009(Temp), f. 4-20-09, cert. ef. 5-1-09 thru 10-28-09; SSP 13-2009, f. & cert. ef. 7-1-09; SSP 14-2009(Temp), f. & cert. ef. 7-1-09 thru 10-28-09; SSP 28-2009, f. & cert. ef. 10-1-09; 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 10-2011, f. 3-31-11, cert. ef. 4-1-11; SSP 16-2012(Temp), f. & cert. ef. 5-1-12 thru 10-28-12; SSP 30-2012, f. 9-28-12, cert. ef. 10-1-12; SSP 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

## 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 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 461-110-0350) 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 preced-

ing 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 an Oregon Program of Quality contracted slot under OAR 461-135-0407 or Head Start program contracted slot under 461-135-0405.

(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.

(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, 409.610, 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

## 461-115-0050

### When an Application Must Be Filed

(1) An individual must file an application, or may amend a completed application, as a prerequisite to receiving benefits as follows:

(a) An individual may apply for the TA-DVS program as provided in OAR 461-135-1220.

(b) In all programs except the TA-DVS program:

(A) Except as provided otherwise in this rule, an individual wishing to apply for program benefits must submit a complete application on a form approved by the Department.

(B) An application is complete if all of the following requirements are met:

(i) All information necessary to determine the individual’s eligibility and benefit amount is provided on the application for each individual in the filing group.

(ii) The applicant, even if homeless, provides a mailing address.

(iii) The application is signed. An individual required but unable to sign the application may sign with a mark, witnessed by another individual.

(iv) The application is received by the Department, except an electronic application (see OAR 461-001-0000) meets the requirements of this paragraph only when submitted to and received by the Department with an electronic signature.

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(2) A new application is not required in the following situations:

(a) In the SNAP program, when a single application can be used both to determine an individual is ineligible in the month of application and to determine the individual is eligible the next month. This can be done when:

(A) Anticipated changes make the filing group (see OAR 461-110-0370) eligible the second month; or

(B) The filing group provides verification between 30 and 60 days following the filing date (see OAR 461-115-0040), under 461-180-0080.

(b) In all programs except the SNAP program, when a single application can be used both to determine an individual is ineligible on the date of request (see OAR 461-115-0030) and to determine the individual is eligible when anticipated changes make the filing group eligible within 45 days from the date of request.

(c) When the case is closed and reopened during the same calendar month.

(d) When benefits were suspended for one month because of the level of income, and the case is reopened the month following the month of suspension.

(e) When reinstating medical benefits for a pregnant woman covered by OAR 461-135-0950, notwithstanding subsection (g) of this section.

(f) In the GAM, OSIPM, and QMB programs, when the medical benefits of an individual are suspended because the individual lives in a public institution (see OAR 461-135-0950), if the inmate is released within 12 months of admission and the inmate provides notification to the Department within 10 days of the release.

(3) When an individual establishes a new date of request (see OAR 461-115-0030) prior to the end of the month following the month of case closure, unless the Department determines a new application is required, a new application is not required in the following situations:

(a) In the OSIPM program, when the individual's case closed due to failure to make a liability payment required under OAR 461-160-0610.

(b) In the OSIPM-EPD program, when the individual's case closed due to failure to make a participant fee payment required under OAR 461-160-0800.

(4) A new application is required to add a newborn child to a benefit group (see OAR 461-110-0750) according to the following requirements:

(a) For the REF and TANF programs:

(A) A new application is not required if the child is listed on the application as "unborn" and there is sufficient information about the child to establish its eligibility.

(B) A new application is required if the child is not included on the application as "unborn."

(c) In the REF program, no additional application is required to add a newborn to a benefit group receiving benefits from one of the listed programs if eligibility can be determined without submission of a new application.

(d) In the ERDC and SNAP programs, no additional application is required to add an assumed eligible newborn to a benefit group currently receiving Department medical program benefits.

(e) In the ERDC and SNAP programs, an application is not required to add the child to the benefit group.

(f) In all programs other than ERDC, GAM, QMB, REF, REFM, SNAP, and TANF, an application is required.

(5) A new application is required to add an individual, other than a newborn child, to a benefit group according to the following requirements:

(a) In the ERDC and SNAP programs, a new application is not required.

(b) In the REF, REFM, and TANF programs, an individual may be added by amending a current application if the information is sufficient to determine eligibility; otherwise a new application is required.

(c) In all programs other than the ERDC, REF, REFM, SNAP, and TANF programs, a new application is required.

(6) An individual whose TANF grant is closing may request ERDC orally or in writing.

(7) Except for an applicant for the OSIPM, QMB, or SNAP programs, an individual may change between programs administered by the Department using the current application if the following conditions are met:

(a) The individual makes an oral or written request for the change.

(b) The Department has sufficient evidence to determine eligibility and benefit level for the new program without a new application.

(c) The program change can be effected while the individual is eligible for the first program.

(8) In the OSIP, OSIPM, and QMB programs, a new application is not required to redetermine eligibility if the following conditions are met:

(a) The individual currently is receiving benefits from one of these programs; and

(b) The Department has sufficient evidence to redetermine eligibility for the same program or determine eligibility for the new program without a new application or by amending the current application.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.404, 411.704, 411.706, 411.816, 412.049, 414.025, 414.231, 414.826, 414.839

Stats. Implemented: ORS 409.050, 411.060, 411.070, 411.117, 411.404, 411.704, 411.706, 411.816, 412.049, 414.025, 414.231, 414.826, 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 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 3-1991(Temp), f. & cert. ef. 1-17-91; AFS 13-1991, f. & cert. ef. 7-1-91; 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 2-1994, f. & cert. ef. 2-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 27-1996, f. 6-27-1996, cert. ef. 7-1-96; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; 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; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 2-1999, f. 3-26-99, cert. ef. 4-1-99; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 19-2001, f. 8-31-01, cert. ef. 9-1-01; AFS 21-2001(Temp), f. & cert. ef. 10-1-01 thru 12-31-01; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 4-2005, f. & cert. ef. 4-1-05; 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 2-2008(Temp), f. & cert. ef. 1-28-08 thru 6-30-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 13-2009, f. & cert. ef. 7-1-09; SSP 17-2009(Temp), f. 7-29-09, cert. ef. 8-1-09 thru 1-28-10; SSP 22-2009(Temp), f. & cert. ef. 8-28-09 thru 1-28-10; 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 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 19-2013(Temp), f. 7-31-13, cert. ef. 8-1-13 thru 1-28-14; SSP 28-2013(Temp), f. & cert. ef. 10-1-13 thru 1-28-14; SSP 37-2013, f. 12-31-13, cert. ef. 1-1-14; SSP 15-2014, f. & cert. ef. 7-1-14

## 461-115-0230

### Interviews

(1) In the TANF program, the Department may conduct a required face-to-face interview by telephone or home visit if an authorized representative (see OAR 461-115-0090) has not been appointed, and participating in a face-to-face interview is a hardship (see section (2) of this rule) for the household.

(2) For the purposes of this rule, "hardship" includes but is not limited to:

(a) Care of a household member;

(b) A client's age, disability (see OAR 461-001-0000), or illness;

(c) A commute of more than two hours from the client's residence to the nearest branch office (see OAR 461-001-0000);

(d) A conflict between the client's work or training schedule and the business hours of the branch office; and

(e) Transportation difficulties due to prolonged severe weather or financial hardship.

(3) In the SNAP program:

(a) An interview must be scheduled so that the filing group (see OAR 461-110-0370) has at least ten days to provide any needed verification before the deadline under OAR 461-115-0210.

(b) A face-to-face interview must be granted at the applicant's request.

(c) When an applicant misses the first scheduled interview appointment, the Department must inform the applicant by regular mail of the missed interview.

(d) An applicant who fails to attend a scheduled interview must contact the Department no later than 30 days following the filing date (OAR 461-115-0040) to be eligible for benefits.

(e) An adult in the filing group or the authorized representative of the filing group is interviewed once every 12 months.

(4) In the ERDC program:

(a) Except as provided otherwise in subsection (c) of this section, an interview with an adult in the filing group (see OAR 461-110-0350) or the authorized representative of the filing group is required to process an initial application and a renewal of benefits.

(b) A phone interview is preferred; however, a face-to-face interview must be granted at the applicant's request.

(c) An interview is not required when the Department has implemented the Child Care Reservation List and it is determined that a decision notice of ineligibility will be sent under OAR 461-115-0016.

(5) In the OSIPM and QMB programs, except for individuals who are assumed eligible (see OAR 461-135-0010), the Department must complete an interview with the client or client's authorized representative at initial application and at redetermination. The interview may be completed face-to-face in the branch office, by telephone, or during a home visit.

Stat. Auth.: ORS 411.060, 411.404, 411.704, 411.706, 411.816, 412.049, 414.025, 414.231, 414.826, 414.831 & 414.839

Stats. Implemented: ORS 411.060, 411.070, 411.404, 411.704, 411.706, 411.816, 412.049, 414.025, 414.231, 414.826, 414.831 & 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 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f.

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& cert. ef. 2-1-94; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; AFS 9-2001, f. & cert. ef. 6-1-01; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; 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 22-2011(Temp), f. & cert. ef. 7-22-11 thru 1-18-12; SSP 35-2011, f. 12-27-11, cert. ef. 1-1-12; SSP 7-2012(Temp), f. & cert. ef. 2-29-12 thru 8-27-12; SSP 25-2012, f. 6-29-12, cert. ef. 7-1-12; SSP 15-2014, f. & cert. ef. 7-1-14

## 461-120-0010

### Residency Requirements

(1) To be eligible for benefits, an individual must be a resident of Oregon.

(2) Except as provided otherwise in OAR 461-120-0030 and this rule, an individual is a resident of Oregon if the individual lives in Oregon.

(3) There is no minimum amount of time an individual must live in Oregon to be a resident. However, the individual must intend to remain in Oregon except in the following situations:

(a) EA may be issued to help an individual return to a former state of residence.

(b) In the OSIPM, QMB, and REFM programs, when an individual is presumed incapable of forming an intent to reside under OAR 461-120-0050.

(c) In the TANF program, an individual is considered a resident if the individual entered Oregon with a job commitment or looking for work, and is not receiving benefits from another state.

(d) SNAP does not require intent to remain to establish residency.

(e) In the TA-DVS program, to the extent permitted under OAR 461-135-1200.

(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.

Stat. Auth: ORS 411.060, 411.070, 411.404, 411.706, 411.816, 412.006, 412.014, 412.049, 414.025, 414.231, 414.826, 414.831

Stats. Implemented: ORS 411.060, 411.070, 411.404, 411.706, 411.816, 412.006, 412.014, 412.049, 414.025, 414.231, 414.826, 414.831

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; 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 15-2014, f. & cert. ef. 7-1-14

## 461-135-0832

### Estate Administration; Definitions

Effective July 18, 1995, for purposes of these rules (OAR 461-135-0832 to 461-135-0847) and ORS 93.268, 410.075, 411.620, 411.630, 411.694, 411.708, 411.795, 416.310, 416.340, and 416.350 the terms listed below have the meanings ascribed to them herein; provided, however, as used in these rules, any term has the same meaning as when used in a comparable context in the laws of the United States in effect on June 1, 1996, relating to the recovery of medical assistance paid by a state pursuant to 42 USC 1396 et. seq. relating to Grants to States for Medical Assistance Programs, unless a different meaning is clearly required or the term is specifically defined herein. The Department applies the definitions and procedures set forth in these rules to recoveries and claims made pursuant to ORS 411.708, 411.795, 416.310, 416.340, and 416.350.

(1) "Assets" means all income and resources of an individual, including any income or resources that an individual is entitled to at the time of death, including any income or resources to which the individual is entitled, but does not receive, because of action: by the individual; the individual's spouse (see OAR 461-001-0000); by a person, including a court or administrative body with legal authority to act in place of or on behalf of the individual; or by any person, including any court or administrative body, acting at the direction or upon the request of the individual.

(2) "Assign" means a person who acquires an interest in real or personal property or an asset pursuant to a written or oral assignment of such real or personal property or asset from a person with the legal right to assign it.

(3) "Assistance" means general assistance and public assistance as defined in ORS 411.010 and medical assistance as defined in ORS 414.025.

(4) "Bona fide purchaser for value" means any person who provides consideration, including money or property, to a seller or transferor of real property or personal property equal to the fair market value of the real or personal property sold or transferred.

(5) "Child under age 21" means the deceased recipient's natural or adopted son or daughter who is under 21 years of age throughout the time the Department seeks to enforce its claim.

(6) "Child with a disability" means the deceased recipient's natural or adopted son or daughter of any age, who meets SSI disability criteria

throughout the time the Department seeks to enforce its claim, and who presents evidence to the Department substantiating the disability within two years after the Department initially asserts its claim.

(7) "Child with a visual impairment" means the deceased recipient's natural or adopted son or daughter, of any age, who, within two years after the Department initially asserts its claim, substantiates blindness throughout the time the Department seeks to enforce its claim by presenting evidence of:

- (a) Vision of 20/200 or less in the better eye with a corrective lens;
- (b) A limitation in vision field to an angle of 20 degrees or less; or
- (c) Meeting any other SSI criteria for blindness.

(8) "Consideration furnished test" means the method by which the ownership of real or personal property is traced to its economic origin. The fractional share of the property considered owned by a co-owner shall be that fractional share to have originally belonged to or to be attributable to the monetary consideration furnished by the co-owner. The fractional share is based on the proportion the original ownership share or monetary consideration bore to the acquisition cost and, if applicable, capital additions for the property. The fractional share is not based on the dollar amount of contribution compared to the current market value of the property. For example, if one co-owner contributed \$2,500 and the other \$7,500 to the purchase price of a \$10,000 property in 1960; in 1995, the property is appraised at \$50,000. The co-owner who contributed \$2,500 is considered to own 25% of the property in 1995.

(9) "Convincing evidence" includes, but is not limited to:

- (a) Recorded documents of title.
- (b) Unrecorded documents of title executed contemporaneously with the transaction or transfer at issue.
- (c) Tax statements or returns.
- (d) Records of banking, financial or other similar institutions.
- (e) Written receipts, bills of sale or other writings or documents executed contemporaneously with the transaction or transfer at issue.

(f) Such other reliable, probative evidence, including oral, of a similar nature and authenticity that accurately reflects the true facts of the transaction or transfer at issue.

(10) "Date of request" means the date an individual or someone authorized on behalf of the individual contacts the Department or uses another appropriate method to request benefits (see OAR 461-115-0150). The request may be oral or in writing. It starts the application process.

(11) "Department" means the Department of Human Services, the Oregon Health Authority, or both.

(12) "Domestic partner" means an individual joined in a domestic partnership as defined in ORS 106.310.

(13) "Estate" means with respect to the collection of payments made for assistance provided prior to July 18, 1995:

(a) For recipients who die prior to October 1, 2008, all real property, personal property, or other assets, wherever located, in which a recipient had any legal title or ownership or beneficial interest at the time of death, including real property, personal property, or other assets conveyed by the recipient to, subsequently acquired by, or traceable to, a person, including the recipient's spouse and any successor-in-interest to the recipient's spouse, through:

- (A) Tenancy by the entirety;
- (B) Joint tenancy;
- (C) Tenancy in common;
- (D) Not as tenants in common, but with the right of survivorship;
- (E) Life estate;
- (F) Transfer on death deed;
- (G) Living trust;
- (H) Annuity purchased on or after April 1, 2001; or
- (I) Other similar arrangement.

(b) For recipients who die on or after October 1, 2008, all real property, personal property, or other assets, wherever located, in which a recipient had any legal title or ownership or beneficial interest at the time of death of the recipient, including real property, personal property, or other assets conveyed by the recipient to, subsequently acquired by, or traceable to, a person, including the recipient's spouse and any successor-in-interest to the recipient's spouse, through:

- (A) Tenancy by the entirety;
- (B) Joint tenancy;
- (C) Tenancy in common;
- (D) Not as tenants in common, but with the right of survivorship;
- (E) Life estate;
- (F) Transfer on death deed;
- (G) Living trust;

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(H) Annuity purchased on or after April 1, 2001; or

(I) Other similar arrangement, includes, but is not limited to, an interspousal transfer of assets, including one facilitated by a court order, which occurred no earlier than 60 months prior to the first date of request established from the recipient's and the recipient's spouse's applications, or at any time thereafter, whether approved, withdrawn, or denied, for the medical assistance program.

(14) "General Assistance" means "general assistance" as defined in ORS 411.010.

(15) "Heir" means any individual, including the surviving spouse, who is entitled under intestate succession to the real property, personal property, and assets of a decedent who died wholly or partially intestate.

(16) "Interest" means any form of legal, beneficial, equitable or ownership interest.

(17) "Interspousal transfer" means any transfer, or chain of transfers, that effectively transfers title or control of an asset, or an interest in an asset, from one spouse to another, including: direct transfers between spouses, transfers from one or both spouses to a trust, and transfers from one trust to another trust.

(18) "Intestate" means one who dies without leaving a valid will, or the circumstance of dying without leaving a valid will, effectively disposing of all of a decedent's estate.

(19) "Intestate succession" means succession to real property, personal property or assets of a decedent who dies intestate or partially intestate.

(20) "Joint tenancy" means ownership of property held under circumstances that entitle one or more owners to the whole of the property on the death of the other owner(s), including, but not limited to, joint tenants with right of survivorship and tenants by the entirety.

(21) "Legal title" means legal ownership by a person.

(22) "Life estate" means an interest in real or personal property that terminates upon the death of a measuring life.

(23) "Living trust" means a revocable or irrevocable inter vivos trust funded with assets to which the recipient is legally entitled.

(24) "Medical Assistance" (MA) is defined in ORS 414.025 and incorporated by this reference.

(25) "Medical institution" means a facility that provides care and services equivalent to those received in a nursing facility. "Medical institution" does not apply to home and community-based care (see OAR 461-001-0030), in-home services, adult foster home (AFH) care, residential care facility (RCF) services, or assisted living facility (ALF) care.

(26) "Medicare cost sharing" means medical assistance funds used to pay Medicare premiums, coinsurance, copayments and deductibles.

(27) "Ownership documents" mean any applicable documents, certificates or written evidence of title or ownership such as, but not limited to, recorded deeds, stock certificates, certificates of title, bills of sale, or other similar documents evidencing ownership or legal title held by a person.

(28) "Permanently institutionalized" means an individual, regardless of age, who, at the time of his or her death, had resided in a nursing facility, intermediate care facility for the mentally retarded, or other medical institution, for 180 days or more.

(29) "Person" means any individual, corporation, association, firm, partnership, trust, estate or other form of entity.

(30) "Personal property" means all tangible and intangible personal property wherever located, including, but not limited to, chattels and movables, boats, vehicles, furniture, personal effects, livestock, tools, farming implements, cash, currency, negotiable papers, securities, contracts, and contract rights.

(31) "Probate estate" means all real property, personal property, or other assets included in a decedent's estate as it is defined by applicable state probate law.

(32) "Real property" means all land wherever situated, including improvements and fixtures thereon, and every estate, interest, and right, whether legal or equitable, therein including, but not limited to, fee simple, terms for years, life estates, leasehold interests, condominiums or time share properties. "Real property" includes property conveyed by the individual to, subsequently acquired by, or traceable to, a person, including the individual's surviving spouse and any successor-in-interest to the individual's surviving spouse, if the "real property" may be included in the individual's, or the individual's surviving spouse's, estate, as defined in this rule.

(33) "Recipient of property" means:

(a) Any survivor, heir, assign, devisee under a will, beneficiary of a trust, transferee or other person to whom real property, personal property or other assets pass upon the death of the decedent either by law, intestate succession, contract, will, trust instrument or otherwise; and

(b) Any subsequent transferee of such real property, personal property, or asset, or proceeds from the sale thereof, through any form of conveyance, that is not a bona fide purchaser for value.

(34) "Survivor" means any person who, as a co-tenant, is automatically entitled to an expanded share of real or personal property upon the death of a fellow co-tenant.

(35) "Survivorship" means an interest in real or personal property that expires upon the death of an individual whereby the interest of the individual's co-owners automatically expands to the same extent without necessity for any act of transfer or distribution.

(36) "Tenancy in common" means ownership of real or personal property by an individual together with one or more other persons which ownership interest shall not pass by survivorship upon the death of the individual.

(37) "Time of death" means the instant of death, the time and date of which shall be established in the place of the decedent's residence; in no case shall time of death be construed to mean a time after which an interest in real or personal property or other assets may:

(a) Pass by survivorship or other operation of law due to the death of the decedent; or

(b) Terminate by reason of the decedent's death.

(38) "Transfer on death deed" has the meaning set out in ORS 93.949.

(39) "Value" means the fair market value. Fair market value is the price at which real or personal property would change hands between a willing buyer and a willing seller. In the event the real or personal property was not reported to the Department by the deceased Medicaid recipient, the "value" would be established based on its fair market value at the time of discovery.

Stat. Auth: ORS 93.268, 410.070, 410.075, 411.060, 411.070, 416.340, 416.350  
Stats. Implemented: ORS 93.268, 410.070, 410.075, 411.010, 411.060, 411.694, 411.708, 411.795, 416.310, 416.340, 416.350, 2011 OL 212 sec. 2, 2011 OL 720 sec. 224  
Hist.: AFS 29-1996, f. & cert. ef. 8-28-96; AFS 30-2000, f. & cert. ef. 12-1-00; 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 10-2002, f. & cert. ef. 7-1-02; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 16-2008, f. 7-1-08, cert. ef. 10-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 5-2010, f. & cert. ef. 4-1-10; SSP 35-2011, f. 12-27-11, cert. ef. 1-1-12; SSP 17-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SSP 26-2013, f. & cert. ef. 10-1-13; SSP 37-2013, f. 12-31-13, cert. ef. 1-1-14; SSP 15-2014, f. & cert. ef. 7-1-14

## 461-135-0835

### Limits on Estate Claims

(1) The Estate Administration Unit is designated and authorized to administer the estate recovery program for the Oregon Health Authority and the Department of Human Services, and to present and file claims for payment. This rule sets out some of these claims.

(2) For the OSIP program (see OAR 461-101-0010):

(a) The amount of any payments or benefits, including overpayments (see OAR 461-195-0501), are a claim against the probate estate (see 461-135-0832) of any deceased recipient.

(b) The claim for correctly paid payments or benefits under OSIP are deferred until the death of the spouse (see OAR 461-001-0000) or domestic partner (see 461-135-0832), if any, of the deceased recipient.

(c) If the deceased recipient has no probate estate, the enforcement of the claim has been deferred, or there are insufficient resources in the probate estate to pay the claim in full, the probate estate of the spouse or domestic partner of the deceased recipient, if any, is charged for any payments or benefits paid under OSIP to the deceased recipient, the spouse, or domestic partner.

(d) The claim for correctly paid payments or benefits under OSIP may not be enforced if the deceased recipient is survived by a child under age 21 (see OAR 461-135-0832), a child with a disability (see 461-135-0832), or a child with a visual impairment (see 461-135-0832); and the child survives to the closing of the probate estate.

(e) Transfers of real or personal property without adequate consideration, by recipients of payments or benefits under OSIP, are voidable and may be set aside under ORS 411.620.

(f) Except when there is a surviving spouse or domestic partner, or a surviving child under age 21, a child with a disability, or a child with a visual impairment, the amount of any payments or benefits provided is a claim against the estate (see OAR 461-135-0832) in any conservatorship proceedings and may be paid pursuant to ORS 125.495.

(3) For General Assistance (see OAR 461-135-0832):

(a) The amounts of any payments or benefits, including overpayments, are a claim against the probate estate of any deceased recipient. The amount includes the state's monthly contribution, paid prior to January 1, 2014, to the federal government for the recipient's Medicare Part D prescription drug coverage.

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(b) The claim for correctly paid payments or benefits under the General Assistance program is deferred until the death of the spouse or domestic partner, if any, of the deceased recipient.

(c) If the deceased recipient has no probate estate, the enforcement of the claim has been deferred, or there are insufficient resources in the probate estate to pay the claim in full, then the probate estate of the spouse or domestic partner of the deceased recipient, if any, is charged for any payments or benefits to the deceased recipient, the spouse, or domestic partner.

(d) The claim for correctly paid payments or benefits under the OSIP program may not be enforced if the deceased recipient is survived by a child under age 21, a child with a disability, or a child with a visual impairment; and the child survives to the closing of the probate estate.

(e) Except when there is a surviving spouse or domestic partner, or a surviving child under age 21, a child with a disability, or child with a visual impairment, the amount of any assistance paid is a claim against the estate in any conservatorship proceedings and may be paid pursuant to ORS 125.495.

(4) For Medical Assistance (MA, as defined in OAR 461-135-0832):

(a) In determining the extent of the estate resources subject to the claim of the Department for correctly paid benefits, except as provided in subsection (b) of this section, the Department must disregard resources in an amount equal to the value (see OAR 461-135-0832) of resources excluded in the most recent eligibility determination under 461-160-0855, based on payments received under a qualified partnership policy (see 461-001-0000). The disregard of resources specific to the estate recovery claim applies to MA benefits received after the effective date of the MA eligibility determination in which a qualified partnership policy was considered and approved. The amount of any MA incurred in a prior MA eligibility period where qualified partnership policy benefits were not considered is not subject to the estate resource disregard.

(b) There is no disregard of resources under subsection (a) of this section if the recipient, or the spouse of the recipient, at any time transferred the value of the qualified partnership policy excluded resource amount to another individual for less than fair market value prior to the death of the recipient or the recipient's spouse, or exhausted the disregarded resource amount by purchasing things of value to the recipient or the recipient's spouse while either was living.

(c) The amount of any incorrectly paid payments or benefits, excluding an administrative error overpayment (see OAR 461-195-0501), are a claim, against the probate estate of any deceased recipient.

(d) The claim for correctly paid payments or benefits under MA is deferred until the death of the surviving spouse, if any, of the deceased recipient. After the death of a surviving spouse, the deferred claim of the deceased recipient is a claim against the following assets (see OAR 461-135-0832) or their proceeds in the probate estate of the spouse.

(A) For a recipient who died prior to October 1, 2008, the Department has a claim against the probate estate of the spouse for medical assistance (see OAR 461-135-0832) paid to the recipient, but only to the extent that the spouse received property or other assets from the recipient through any of the following:

- (i) Probate.
- (ii) Operation of law.

(B) For a recipient who dies on or after October 1, 2008, the Department has a claim against the probate estate of the recipient's spouse for medical assistance paid to the recipient, but only to the extent that the recipient's spouse received property or other assets from the recipient through any of the following:

- (i) Probate.
- (ii) Operation of law.

(iii) An interspousal transfer (see OAR 461-135-0832), including one facilitated by a court order, which occurs:

(I) Before, on, or after October 1, 2008; and

(II) No earlier than 60 months prior to the first date of request (see OAR 461-135-0832) established from the applications for MA of the recipient and the recipient's spouse, or at any time thereafter, whether approved, withdrawn, or denied.

(e) The claim for correctly paid payments or benefits under MA may not be enforced if the deceased recipient is survived by a child under age 21, a child with a disability, or a child with a visual impairment.

(f) For recipients who are not permanently institutionalized (see OAR 461-135-0832):

(A) The amount of any payments or benefits paid prior to October 1, 1993 to or on behalf of a recipient 65 years of age or older are a claim against the probate estate of any deceased recipient.

(B) The amount of any payments or benefits, paid on or after October 1, 1993 and prior to July 18, 1995, to or on behalf of a recipient 55 years of age or older are a claim against the estate of any deceased recipient.

(C) The amount of any payments or benefits, paid on or after July 18, 1995 and prior to October 1, 2013, to or on behalf of a recipient 55 years of age or older are a claim against the estate of any deceased recipient. All correctly made payments on or after January 1, 2010 for Medicare cost sharing (see OAR 461-135-0832) are excluded from a claim.

(D) The amount of any payments or benefits, paid October 1, 2013 or later, to or on behalf of a recipient 55 years of age or older, during the time the Department was paying any of the cost of care of the individual in a nursing facility, home and community based care (see OAR 461-001-0030), or in home services through the State Plan Personal Care Services (see OAR 411-034-0010), are a claim against the estate of any deceased recipient. All correctly made payments on or after January 1, 2010 for Medicare cost sharing are excluded from a claim.

(g) For permanently institutionalized individuals, a claim includes amounts calculated according to subsection (f) of this section and the following:

(A) The amount of any payments or benefits before July 18, 1995 to or on behalf of a recipient who was permanently institutionalized is a claim against the probate estate of the deceased recipient.

(B) The amount of any payments or benefits paid between July 19, 1995 through September 30, 2013 to or on behalf of a recipient who was permanently institutionalized is a claim against the estate of the deceased recipient.

(C) The amount of any payment for services provided in a nursing facility, an intermediate care facility for an individual with intellectual or developmental disabilities, a psychiatric institution, or other medical institution (see OAR 461-135-0832) paid after September 30, 2013 to or on behalf of a recipient who was permanently institutionalized is a claim against the estate of the deceased recipient.

(5) The amount paid after December 31, 2013, to the federal government for the recipient's Medicare Part D prescription drug coverage is a claim against the estate of the deceased recipient.

(6) For trusts that comply with OAR 461-145-0540(9) and (10), the maximum distribution to the Department is the total of all MA payments or benefits paid to or on behalf of the deceased recipient. Subsections (4)(d) and (4)(e) of this rule do not apply to this section.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.404, 413.042, 416.340, 416.350, 2013 OL 14 Sec. 10

Stats. Implemented: ORS 93.969, 125.495, 411.404, 411.620, 411.630, 411.708, 411.795, 416.310, 416.350, 2013 OL 14 Sec. 10

Hist.: AFS 13-1991, f. & cert. ef. 7-1-91; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; 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 16-2003, f. & cert. ef. 7-1-03; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 16-2008, f. 7-1-08, cert. ef. 10-1-08; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; SSP 5-2010, f. & cert. ef. 4-1-10; SSP 16-2010(Temp), f. & cert. ef. 5-27-10 thru 11-23-10; SSP 32-2010, f. & cert. ef. 10-1-10; SSP 17-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SSP 26-2013, f. & cert. ef. 10-1-13; SSP 37-2013, f. 12-31-13, cert. ef. 1-1-14; SSP 15-2014, f. & cert. ef. 7-1-14

### 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 person 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 programs, 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" include 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.

# ADMINISTRATIVE RULES

(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 cannot be used to meet the basic monthly needs of the financial group.

(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, 411.816, 412.014, 412.049  
Stats. Implemented: ORS 409.010, 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 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

## 461-140-0040

### Determining Availability of Income

(1) This rule describes the date income is considered available, what amount of income is considered available, and situations in which income is considered unavailable.

(2) Income is considered available the date it is received or the date a member of the financial group (see OAR 461-110-0530) has a legal right to the payment and the legal ability to make it available, whichever is earlier, except as follows:

(a) Income usually paid monthly or on some other regular payment schedule is considered available on the regular payment date if the date of payment is changed because of a holiday or weekend.

(b) Income withheld or diverted at the request of an individual is considered available on the date the income would have been paid without the withholding or diversion.

(c) An advance or draw of earned income is considered available on the date it is received.

(d) Income that is averaged, annualized, converted, or prorated is considered available throughout the period for which the calculation applies.

(e) A payment due to a member of the financial group, but paid to a third party for a household expense, is considered available when the third party receives the payment.

(f) In prospective budgeting, income is available in the month the income is expected to be received (see OAR 461-150-0020).

(3) The following income is considered available even if not received:

(a) Deemed income.

(b) In the ERDC, REF, REFM, and TANF programs, the portion of a payment from an assistance program, such as public assistance, unemployment compensation, or Social Security, withheld to repay an overpayment.

(c) In the GA, GAM, OSIPM, and QMB programs, the portion of a payment from an assistance program (such as public assistance, unemployment compensation, or Social Security) withheld to repay an overpayment if the individual was not receiving GA, GAM, OSIP, OSIPM, or QMB during the time period the overpaid benefit was received. If the individual was receiving GA, GAM, OSIP, OSIPM, or QMB during the time period the overpaid benefit was received, the withheld amount is treated as follows:

(A) If the overpaid benefit was counted in determining eligibility for GA, GAM, OSIP, OSIPM, or QMB, it is considered unavailable for a time period equivalent to the time the individual was receiving both GA, GAM, OSIP, OSIPM, or QMB and the overpaid benefits

(B) If the overpaid benefit was not counted in determining eligibility for GA, GAM, OSIP, OSIPM, or QMB, it is considered available.

(d) In the SNAP program, the portion of a payment from the TANF program counted as disqualifying income under OAR 461-145-0105.

(4) The amount of income considered available is the gross before deductions, such as garnishments, taxes, or other payroll deductions including flexible spending accounts.

(5) The following income is not considered available:

(a) Wages withheld by an employer in violation of the law.

(b) Income received by another person who does not pay the client his or her share.

(c) Income received by a member of the financial group after he or she has left the household.

(d) Moneys withheld from or returned to the source of the income to repay an overpayment from that source unless the repayment is countable:

(A) In the SNAP program, under OAR 461-145-0105;

(B) In the ERDC, REF, REFM, and TANF programs, under subsection (3)(b) of this rule; or

(C) In the GA, GAM, OSIP, OSIPM, and QMB programs, under subsection (3)(c) of this rule.

(e) For a client who is not self-employed, income required to be expended on an ongoing, monthly basis on an expense necessary to produce the income, such as supplies or rental of work space.

(f) Income received by the financial group but intended and used for the care of someone not in the financial group as follows:

(A) If the income is intended both for someone in the financial group and someone not in the financial group, the portion of the income intended for the care of the individual not in the financial group is considered unavailable.

(B) If the portion intended for the care of the individual not in the financial group cannot readily be identified, the income is prorated evenly among the individuals for whom the income is intended. The prorated share intended for the care of the individual not in the financial group is then considered unavailable.

(g) In the ERDC, REF, REFM, SNAP, and TANF programs, income controlled by the client's abuser if the client is a victim of domestic violence (see OAR 461-001-0000), the client's abuser controls the income and will not make the money available to the filing group, and the abuser is not in the client's filing group.

(h) In the OSIP, OSIPM, and QMB programs, unearned income not received because a payment was reduced to cover expenses incurred by a member of the financial group to secure the payment. For example, if a retroactive check is received from a benefit program other than SSI, legal fees connected with the claim are subtracted. Or, if payment is received for damages received as a result of an accident the amount of legal, medical or other expenses incurred by a member of the financial group to secure the payment are subtracted.

(i) In the REFM program, any income used for medical or medical-related purposes.

(6) The availability of lump-sum income is covered in OAR 461-140-0120.

Stat. Auth.: ORS 409.050, 411.060, 411.404, 411.816, 412.049  
Stats. Implemented: ORS 411.060, 411.117, 411.404, 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 9-1991, f. 3-29-91, cert. ef. 4-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 17-1992, f. & cert. ef. 7-1-92; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; 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 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 13-2002, f. & cert. ef. 10-1-02; 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 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 8-2008, f. & cert. ef. 4-1-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 5-2009, f. & cert. ef. 4-1-09; 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

## 461-145-0340

### Lodger Income

(1) Lodger income is the amount a lodger (see OAR 461-001-0000) pays the filing group for room (rent) and board (meals).

(2) Lodger income is counted as follows:

(a) In the REF, REFM, and TANF programs, lodger income not excluded under OAR 461-155-0350 is treated as self employment income.

(b) In all programs except the GA, GAM, OSIP, OSIPM, QMB, REF, REFM, and TANF programs, lodger income is treated as self-employment income.

(c) In the GA, GAM, OSIP, OSIPM, and QMB programs, lodger income is the amount a member of the household group (see OAR 461-110-0210) pays for the use of a room (rent) with or without board (meals) and is treated as unearned income:

(A) Lodger income may be reduced by the following allowable expenses such as:

(i) Interest and escrow portions of a mortgage payment (at the point the payment is made to the mortgage holder);

(ii) If the home is rented or leased by the financial group, the monthly rent payment;

(iii) Real estate insurance;

(iv) Repairs (such as a minor correction to an existing structure);

(v) Property taxes (if not included in an escrow portion of the mortgage payment);

(vi) Lawn care;

(vii) Snow removal;

(viii) Advertising for tenants; and

(ix) Utilities.

# ADMINISTRATIVE RULES

(B) Allowable expenses are prorated based on the number of rooms designated for rent compared to the number of rooms in the house (excluding bathrooms). Basements and attics are counted only if they have been converted to living spaces (such as recreation rooms).

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.816, 412.049  
Stats. Implemented: ORS 411.060, 411.070, 411.404, 411.816, 412.049  
Hist.: AFS 80-1989, f. 12-21-89, 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 19-1993, f. & cert. ef. 10-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 9-2001, f. & cert. ef. 6-1-01; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; 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 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 15-2014, f. & cert. ef. 7-1-14

## 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

## 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) 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 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 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 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 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. This deduction may be taken from earned income if the individual has less than \$20 in unearned income.

(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 411.060, 411.070 & 414.042

# ADMINISTRATIVE RULES

Stats. Implemented: ORS 411.060, 411.070 & 414.042

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

## 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 411.060, 411.070, 414.042

Stat. Implemented: ORS 411.060, 411.070, 414.042

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

## 461-160-0620

### Income Deductions and Client Liability; Long-Term Care Services or Home and Community-Based Care; OSIPM

In the OSIPM program:

(1) Deductions from income are made for a client residing in or entering a long-term care facility or receiving home and community-based care (see OAR 461-001-0030) as explained in subsections (3)(a) to (3)(h) of this rule.

(2) Except as provided otherwise in OAR 461-160-0610, the liability of the client is determined according to subsection (3)(i) of this rule.

(3) Deductions are made in the following order:

(a) One standard earned income deduction of \$65 is made from the earned income in the OSIPM-AD and OSIPM-OAA programs. The deduction is \$85 in the OSIPM-AB program.

(b) The deductions under the plan for self-support as allowed by OAR 461-145-0405.

(c) One of the following need standards:

(A) A \$30 personal needs allowance for a client receiving long-term care services.

(B) A \$90 personal needs allowance for a client receiving long-term care services who is eligible for VA benefits based on unreimbursed medical expenses. The \$90 allowance is allowed only when the VA benefit has been reduced to \$90.

(C) For a client who receives home and community-based care:

(i) Except as provided in subparagraph (ii) of this paragraph, the OSIPM maintenance standard.

(ii) For a client who receives in-home services, the OSIPM maintenance standard plus \$500.

(d) A community spouse monthly income allowance is deducted from the income of the institutionalized spouse to the extent that the income is made available to or for the benefit of the community spouse, using the following calculation.

(A) Step 1 — Determine the maintenance needs allowance. \$1,967 is added to the amount over \$590 that is needed to pay monthly shelter expenses for the principal residence of the couple. This sum or \$2,931 whichever is less, is the maintenance needs allowance. For the purpose of this calculation, shelter expenses are the rent or home mortgage payment (principal and interest), taxes, insurance, required maintenance charges for a condominium or cooperative, and the full standard utility allowance for the SNAP program (see OAR 461-160-0420).

(B) Step 2 — Compare maintenance needs allowance with community spouse's countable income. The countable income of the community spouse is subtracted from the maintenance needs allowance determined in step 1. The difference is the income allowance unless the allowance described in step 3 is greater.

(C) Step 3 — If a spousal support order or exceptional circumstances resulting in significant financial distress require a greater income allowance than that calculated in step 2, the greater amount is the allowance.

(e) A dependent income allowance as follows:

(A) For a case with a community spouse, a deduction is permitted only if the monthly income of the eligible dependent is below \$1,967. To determine the income allowance of each eligible dependent:

(i) The monthly income of the eligible dependent is deducted from \$1,967.

(ii) One-third of the amount remaining after the subtraction in paragraph (A) of this subsection is the income allowance of the eligible dependent.

(B) For a case with no community spouse:

(i) The allowance is the TANF adjusted income standard for the client and eligible dependents.

(ii) The TANF standard is not reduced by the income of the dependent.

(f) Costs for maintaining a home if the client meets the criteria in OAR 461-160-0630.

(g) Medical deductions allowed by OAR 461-160-0030 and 461-160-0055 are made for costs not covered under the state plan. This includes the

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public and private health insurance premiums of the community spouse and the client's dependent.

(h) After taking all the deductions allowed by this rule, the remaining balance is the adjusted income.

(i) The client liability is determined as follows:

(A) For a client receiving home and community-based care (except a client identified in OAR 461-160-0610(4)), the liability is the actual cost of the home and community-based care or the adjusted income of the client, whichever is less. This amount must be paid to the Department each month as a condition of being eligible for home and community-based care. In OSIPM-IC, the liability is subtracted from the gross monthly benefit.

(B) For a client who resides in a nursing facility, a state psychiatric hospital, an Intermediate Care Facility for the Mentally Retarded, or a mental health facility, there is a liability as described at OAR 461-160-0610.

(4) The deduction used to determine adjusted income for a GA and GAM client receiving long-term care services or home and community-based care is as follows:

(a) One standard earned income deduction of \$65 is made from the earned income for a client who is not blind; or

(b) One standard earned income deduction of \$85 is made from the earned income for a client who is blind.

Stat. Auth.: ORS 411.060, 411.070 & 411.706

Stats. Implemented: ORS 411.060, 411.070 & 411.706

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 17-1992, f. & cert. ef. 7-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 5-1993, f. & cert. ef. 4-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 6-1994, f. & cert. ef. 4-1-94; 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 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 15-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 5-1997, f. 4-30-97, cert. ef. 5-1-97; 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 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 3-1999, f. 3-31-99, cert. ef. 4-1-99; AFS 6-1999, f. & cert. ef. 4-22-99; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; 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 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 11-2001, f. 6-29-01, cert. ef. 7-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 16-2003, f. & cert. ef. 7-1-03; 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 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 8-2005(Temp), f. & cert. ef. 7-1-05 thru 10-1-05; SSP 9-2005(Temp), f. & cert. ef. 7-1-05 thru 10-1-05; 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 4-2007, f. 3-30-07, cert. ef. 4-1-07; 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 17-2008, f. & cert. ef. 7-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 13-2009, f. & cert. ef. 7-1-09; 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 35-2011, f. 12-27-11, cert. ef. 1-1-12; SSP 23-2012(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 37-2012, f. 12-28-12, cert. ef. 1-1-13; SSP 16-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SSP 25-2013, f. & cert. ef. 10-1-13; SSP 37-2013, f. 12-31-13, cert. ef. 1-1-14; SSP 3-2014, f. 1-31-14, cert. ef. 2-1-14; SSP 15-2014, f. & cert. ef. 7-1-14

## 461-165-0180

### Eligibility of Child Care Providers

(1) The Department must approve a child care provider to receive payment for child care if information available to the Department provides no basis for denying eligibility unless the Department determines, following a preliminary or final fitness determination (see OAR 407-007-0320) or Child Protective Service (CPS) records checks, that the provider or other subject individual (see 407-007-0210(30)(A), (B), (F), (I), and (O)) is not eligible for payment.

(2) Ineligibility for payment may result from any of the following:

(a) A finding of "denied". A provider may be denied under OAR 461-165-0410 and 461-165-0420. If, after conducting a weighing test as described in OAR 407-007-0210, the Department finds substantial risk to the health or safety of a child in the care of the provider, the provider must be denied and is ineligible for payment. A provider who has been denied has the right to a hearing under 407-007-0330.

(b) A finding of "failed". A provider may be failed if the Department determines, based on a specific eligibility requirement and evidence, that a provider does not meet the eligibility requirements of this rule. A provider with a status of "failed" may reapply at any time by providing the required documents and information to the Department for review.

(c) The Department has referred an overpayment against the provider for collection and the claim is unsatisfied.

(3) The provider must submit a completed Child Care Provider Listing Form (DHS 7494) to the Department within 30 calendar days from the date the Department issues the listing form to the client. The provider and each individual identified under section (4) of this rule must complete and sign the authorization for a records check through the Criminal History (CH) record system maintained by the Oregon State Police (OSP), Federal Bureau of Investigation (FBI), and the Child Protective Service (CPS) record system maintained by the Department and, if necessary, an authori-

zation to release information and fingerprint cards. The provider, each individual described in section (4) of this rule, and each subject individual described in OAR 407-007-0210(30)(a)(A), (B), (F), (I) or (O) must fully disclose all requested information as part of the records check.

(4) This rule also establishes additional requirements for the following individuals:

(a) The site director of an exempt child care facility and each employee of the facility who may have unsupervised access to a child in care.

(b) The child care provider and each individual the provider uses to supervise a child in his or her absence.

(c) In the case of a provider who provides care for a child in the provider's home:

(A) Each individual 16 years of age or older who lives in the provider's home; and

(B) Each individual who visits the home of the provider during the hours care is provided and may have unsupervised access to a child in care.

(5) To receive payment or authorization for payment, the provider must meet the requirements of either subsection (a) or (b) of this section:

(a) Currently be certified or registered with the Office of Child Care (OCC) of the Oregon Department of Education (ODE) under OAR 414-205-0000 to 414-205-0170, 414-300-0000 to 414-300-0440, or 414-350-0000 to 414-350-0250 unless legally exempt, and be in compliance with the applicable rules. The provider must also complete the Department's listing process and be approved by the Department.

(b) If legally exempt from being certified or registered with the CCD, complete the Department's background check process and be approved by the Department.

(6) Each individual described in section (4) of this rule must:

(a) Allow the Department to conduct a national criminal history records check through the Oregon State Police and the Federal Bureau of Investigation as specified in OAR 407-007-0250.

(b) Provide, in a manner specified by the Department, information required to conduct CH, FBI, OSP, and CPS records checks or determine whether the provider meets health and safety requirements.

(c) Have a history of behavior that indicates no substantial risk to the health or safety of a child in the care of the provider.

(7) Each provider must:

(a) Obtain written approval from their certifier or certifier's supervisor if the provider is also certified as a foster parent.

(b) Be 18 years of age or older and in such physical and mental health as will not affect adversely the ability to meet the needs of safety, health, and well-being of a child in care.

(c) Not be in the same filing group as the child cared for and cannot be the parent (see OAR 461-001-0000) of the child.

(d) Allow the Department to inspect the site of care while child care is provided.

(e) Keep daily attendance records showing the arrival and departure times for each child in care and billing records for each child receiving child care benefits from the Department. The provider must keep written records of any attendance that is not able to be recorded in the Child Care Billing and Attendance Tracking (CCBAT) system. These written records must be retained for a minimum of 12 months and provided to the Department upon request.

(f) Be the individual or facility listed as providing the child care. The provider may only use someone else to supervise a child on a temporary basis if the person was included on the most current listing form and the provider notifies the Department's Direct Pay Unit.

(g) Not bill a Department client for an amount collected by the Department to recover an overpayment or an amount paid by the Department to a creditor of the provider because of a lien, garnishment, or other legal process.

(h) Report to the Department's Direct Pay Unit within five days of occurrence:

(A) Any arrest or conviction of any subject individual or individual described in section (4) of this rule.

(B) Any involvement of any subject individual or individual described in section (4) of this rule with CPS or any other agency providing child protective services.

(C) Any change to the provider's name or address including any location where care is provided.

(D) The addition of any subject individual or individual described in section (4) of this rule.

(i) Report suspected child abuse of any child in his or her care to CPS or a law enforcement agency.

(j) Supervise each child in care at all times.

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(k) Prevent any individual who behaves in a manner that may harm children from having access to a child in the care of the provider.

(l) Allow the custodial parent of a child in his or her care to have immediate access to the child at all times.

(m) Inform a parent of the need to obtain immunizations for a child.

(n) Take reasonable steps to protect a child in his or her care from the spread of infectious diseases.

(o) Ensure that the home or facility where care is provided meets all of the following standards:

(A) Each floor level used by a child has two usable exits to the outdoors (a sliding door or window that can be used to evacuate a child is considered a usable exit). If a second floor is used for child care, the provider must have a written plan for evacuating occupants in the event of an emergency.

(B) The facility has safe drinking water.

(C) The facility has a working smoke detector on each floor level and in any area where a child naps.

(D) Each fireplace, space heater, electrical outlet, wood stove, stairway, pool, pond, and any other hazard has a barrier to protect a child. Gates and enclosures should have the Juvenile Products Manufacturers Association (JPMA) certification seal to ensure safety.

(E) Any firearm, ammunition, and other dangerous item such as any medicine, drug, cleaning supply, paint, plastic bag, and poisonous and toxic material is kept in a secure place out of a child's reach.

(F) The building, grounds, any toy, equipment, and furniture are maintained in a clean, sanitary, and hazard free condition.

(G) The facility has a telephone in operating condition.

(H) No person may smoke or use smokeless tobacco in the home or facility during the hours the child care business is conducted. No person may smoke or use smokeless tobacco in motor vehicles while child care children are passengers.

(I) No one may consume alcohol or use non-prescription controlled substances in the presence of children. No one under the influence of alcohol or non-prescription controlled substances may be in the home when child care children are present.

(J) Is not a half-way house, hotel, motel, shelter, or other temporary housing such as a tent, trailer, or motor home. The restriction in this paragraph does not apply to licensed (registered or certified) care approved in a hotel, motel, or shelter.

(K) Is not a structure:

(i) Designed to be transportable; and

(ii) Not attached to the ground, another structure, or to any utilities system on the same premises.

(p) Complete and submit a new listing form every two years, or sooner at the request of the Department, so that the Department may review the provider's eligibility.

(q) Provide evidence of compliance with the Department's administrative rules, upon request of Department staff.

(r) Complete registration for the CCBAT system within 45 days of the date of the registration notice.

(s) Comply with state and federal laws related to child safety systems and seat belts in vehicles, bicycle safety, and crib standards under 16 CFR 1219 and 1220.

(t) Place infants to sleep on their backs.

(8) Child Care providers who are License Exempt or Registered Family Child Care Providers with the Office of Child Care (OCC) of the Oregon Department of Education (ODE) under OAR 414-205-0000 to 414-205-0170 must complete the "Basic Child Care Health and Safety" two-hour, web-based training or the three-hour Oregon Kids Healthy and Safe classroom training prior to being approved by the Department.

(a) Prior to June 16, 2014, a provider who sends the Department a Child Care Provider Listing and Provider Information Sheet (DHS 7494) with a revision date of March 2013, or those who attempt to take the web-based training but are unable due to technical difficulties at the training site, will not be failed for not meeting this training requirement.

(b) License Exempt or Registered Family Child Care Providers who are exempt from this training are those who state at least one of the following:

(A) English is a second language.

(B) No internet access is available.

(9) A child care provider not subject to certification or registration with the Office of Child Care (OCC) of the Oregon Department of Education (ODE) under OAR 414-205-0000 to 414-205-0170, 414-300-0000 to 414-300-0440, or 414-350-0000 to 414-350-0250, must complete an orientation provided by the Department or a Child Care Resource and

Referral agency within 90 days of being approved by the Department if he or she:

(a) Receives funds from the Department; and

(b) Begins providing child care services after June 30, 2010, or resumes providing child care services, after a break of more than one year that began after June 30, 2010.

Stat. Auth.: ORS 181.537, 409.050, 411.060 & 411.070

Stats. Implemented: ORS 181.537, 409.010, 409.610, 411.060, 411.070, 411.122 & 657A.340

Hist.: 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 17-1994(Temp), f. & cert. ef. 8-15-94; 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 2-1997, f. 2-27-97, cert. ef. 3-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 12-1997, f. & cert. ef. 8-25-97; AFS 14-1999, f. & cert. ef. 11-1-99; 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 12-2001, f. 6-29-01, cert. ef. 7-1-01; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 13-2004, f. 4-29-04, cert. ef. 5-1-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 6-2005(Temp), f. & cert. ef. 4-25-05 thru 9-30-05; 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 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 5-2009, f. & cert. ef. 4-1-09; SSP 18-2010, f. & cert. ef. 7-1-10; SSP 32-2010, f. & cert. ef. 10-1-10; SSP 25-2012, f. 6-29-12, cert. ef. 7-1-12; SSP 30-2012, f. 9-28-12, cert. ef. 10-1-12; SSP 8-2013, f. & cert. ef. 4-1-13; SSP 5-2014(Temp), f. 2-4-14, cert. ef. 3-1-14 thru 8-28-14; SSP 10-2014(Temp), f. & cert. ef. 4-1-14 thru 8-28-14; SSP 15-2014, f. & cert. ef. 7-1-14

## 461-170-0010

### Reporting Changes — Overview

A client is required to report a change in circumstances in accordance with the reporting system in which the client participates, OAR 461-170-0011; and

(1) For each program in which a client participates, the Department determines the appropriate reporting system. The Department's reporting systems are Change Reporting System (CRS), Simplified Reporting System (SRS), and Transitional Benefit Alternative (TBA). In addition to any required report form, when a client is required by this division of rules to report a change in circumstances, the report may be made by telephone, office visit, report form, or other written notice. The report must be made as follows:

(a) A client using CRS must report a change according to OAR 461-170-0011.

(b) A client using SRS must report a change according to OAR 461-170-0011 and 461-170-0102. An Interim Change Report form is processed according to OAR 461-170-0011 and 461-170-0101 to 461-170-0104.

(c) A client using TBA is not required to report any change.

(2) A change is considered reported effective the date a client, authorized representative, or ineligible student reports the information to a branch office (see OAR 461-001-0000) or to the Office of Private Health Partnerships (OPHP).

(3) In the ERDC and SNAP programs, when multiple changes are reported at the same time, they must be acted on at the time of reporting and have the same effective date.

(4) A change reported by a client, authorized representative, or ineligible student for one program is considered reported for all programs in which that client participates.

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 12-1992(Temp), 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; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 19-1994, f. & cert. ef. 9-1-94; 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 20-2003, f. & cert. ef. 8-15-03; SSP 23-2003, f. & cert. ef. 10-1-03; CWP 37-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 4-28-04; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 16-2005, f. & cert. ef. 12-1-05; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 28-2009, f. & cert. ef. 10-1-09; 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 32-2010, f. & cert. ef. 10-1-10; SSP 37-2010(Temp), f. & cert. ef. 11-1-10 thru 4-30-11; SSP 10-2011, f. 3-31-11, cert. ef. 4-1-11; SSP 15-2014, f. & cert. ef. 7-1-14

## 461-180-0090

### Effective Dates; Initial Month Medical Benefits

The effective date for starting medical benefits for an eligible client is as follows:

(1) In the GAM, OSIPM, QMB-DW, and REFM programs:

(a) Except as provided for in subsection (b) of this section:

(A) If the client meets all eligibility requirements on the date of request (see OAR 461-115-0030), it is the date of request. An OSIPM program client who is assumed eligible under 461-135-0010(7) meets "all eligibility requirements" for the purposes of this section as follows:

(i) Effective the first day of the month of the initial SSI payment if the client is age 21 or older.

(ii) Effective the first day of the month prior to the month of the initial SSI payment if the client is under the age of 21.

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(B) If the client does not meet all eligibility requirements on the date of request, it is the first day following the date of request that all eligibility requirements are met.

(b) If the client does not complete the application within the time period described in OAR 461-115-0190 (including the authorized extension), the determination of an effective date requires a new date of request.

(2) In the QMB-BAS program, it is the first of the month after the benefit group (see OAR 461-110-0750) has been determined to meet all QMB-BAS program eligibility criteria and the Department receives the required verification.

(3) In the QMB-SMB and QMB-SMF programs, it is:

(a) The first of the month in which the benefit group meets all program eligibility criteria and the Department receives the required verification; or

(b) The first of the month in which the Low Income Subsidy (LIS) information is received by the Social Security Administration (SSA), if the SMB or SMF program application was generated by the electronic transmission of LIS data from the SSA and the benefit group meets all program eligibility criteria.

(4) Retroactive eligibility is authorized under certain circumstances in some medical programs (see paragraph (1)(a)(A) of this rule, OAR 461-135-0875, and 461-180-0140).

Stat. Auth.: ORS 409.010, 409.050, 411.060, 411.070, 411.404, 411.704, 411.706, 414.025, 414.231, 414.826, 414.831, 414.839

Stats. Implemented: ORS 409.010, 409.050, 411.060, 411.070, 411.404, 411.704, 411.706, 414.025, 414.231, 414.826, 414.831, 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 1-1993, f. & cert. ef. 2-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 5-2000, f. 2-29-00, cert. ef. 3-1-00; SSP 5-2003, f. 2-26-03, cert. ef. 3-1-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 29-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; SSP 39-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SSP 1-2010(Temp), f. & cert. ef. 1-26-10 thru 6-30-10; SSP 18-2010, f. & cert. ef. 7-1-10; SSP 20-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; SSP 32-2010, f. & cert. ef. 10-1-10; SSP 19-2013(Temp), f. 7-31-13, cert. ef. 8-1-13 thru 1-28-14; SSP 28-2013(Temp), f. & cert. ef. 10-1-13 thru 1-28-14; SSP 37-2013, f. 12-31-13, cert. ef. 1-1-14; SSP 15-2014, f. & cert. ef. 7-1-14

## 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 limited as provided in each of the following subsections:

(a) An individual who is determined to be a work-eligible individual according to federal definition (45 CFR 261.2(n)(1)). Unless section (10) or (11) of this rule applies, no other individual may participate in and access JOBS contract activities and support services (see OAR 461-001-0025).

(b) An individual who is an applicant in the Pre-TANF program, a recipient of TANF or Post-TANF program benefits, or has become over-income due to earnings in an on-the-job training (see OAR 461-001-0025) activity pursuant to section (11) of this rule.

(2) For eligible individuals, subject to the requirements and limitations in sections (1), (5), (6), and (7) of this rule, the following activities will be 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) Sheltered or 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).

(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) Rehabilitative 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 (see OAR 461-001-0025).

(k) Unsubsidized employment (work).

(l) Adult Basic Education (see OAR 461-001-0025).

(3) The following activities will not include support services payments:

(a) Domestic Violence Intervention.

(b) Family Support & Connections.

(c) Microenterprise (see OAR 461-001-0025).

(d) Post-TANF.

(e) Program entry (see OAR 461-001-0025).

(f) Self Initiated Training (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 (see OAR 461-001-0000 and 461-001-0025).

(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 their 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, 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.

(5) In approving JOBS program support services payments, the Department must consider lower cost alternatives. It is not the intent of the Department or of this rule to supplant Department funding with other funding that is available in the community. It is the Department's expectation that case managers and clients will 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, or a Not Job Ready individual approved by the district to complete a family stability activity. If authorized, payment for child care will be:

(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 461-155-0150.

(B) The minimum hours necessary, including meal and commute time, for the individual to participate in an approved JOBS program activity.

# ADMINISTRATIVE RULES

(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 for a participant 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 an individual's 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, a Not Job Ready individual in a family stability activity, or a teen parent.

(10) 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) may be a volunteer and participate.

(11) An individual who has become over-income for the TANF program due to earnings in an on-the-job training 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 section is only permitted while the individual continues to participate in the on-the-job training activity.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 412.006, 412.009, 412.014, 412.049, 412.124, 2013 Or. Laws 722

Stats. Implemented: ORS 409.010, 411.060, 411.070, 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

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**Rule Caption:** Removing unnecessary references to SAC from OAR chapter 461

**Adm. Order No.:** SSP 16-2014

**Filed with Sec. of State:** 7-1-2014

**Certified to be Effective:** 7-1-14

**Notice Publication Date:** 5-1-2014

**Rules Amended:** 461-101-0010, 461-115-0030, 461-115-0430, 461-120-0030, 461-120-0050, 461-120-0125, 461-120-0210, 461-120-0315, 461-120-0510, 461-135-0010, 461-135-0875, 461-135-0990, 461-155-0360

**Rules Repealed:** 461-110-0340, 461-135-0150

**Subject:** The Department of Human Services amended rules to remove references to "SAC" from OAR chapter 461. SAC refers to medical coverage for children in substitute or adoptive care. The remaining references to SAC in OAR chapter 461 are obsolete. Eligibility for coverage for out-of-state children placed in an Oregon facility is now primarily determined by the Oregon Health Authority's Office of Client and Community Services (OCCS) for medical programs under rules moved from OAR chapter 461 to OCCS rules in OAR chapter 410 effective 10/1/13 (such as OAR 410-200-0015, 410-200-0405, 410-200-0510). Additional eligibility for medical coverage for Oregon children in substitute care and in the custody of the Department are set out in Child Welfare rules in OAR chapter 413-100-0410 - 413-100-0460.

**Rules Coordinator:** Kris Skaro—(503) 945-6067

## 461-101-0010

### Program Acronyms and Overview

(1) Acronyms are frequently used when referring to a program. There is an acronym for each umbrella program and acronyms for each subprogram.

(2) When no program acronym appears in a rule in Chapter 461 of these rules, the rule with no program acronym applies to all programs listed in this rule. If a rule does not apply to all programs, the rule uses program acronyms to identify the programs to which the rule applies.

(3) Wherever an umbrella acronym appears, that means the rule covers all the subprograms under that code.

(4) CAWEM; Citizen/Alien-Waived Emergent Medical. Medicaid coverage of emergent medical needs for clients who are not eligible for other medical programs solely because they do not meet citizenship and alien status requirements.

(5) DSNAP; Disaster Supplemental Nutrition Assistance Program. Following a presidential declaration of a major disaster in Oregon, DSNAP provides emergency DSNAP program benefits to victims. OAR 461-135-0491 to 461-135-0497 cover DSNAP eligibility and benefits.

(6) EA; Emergency Assistance. Emergency cash to families without the resources to meet emergent needs.

(7) ERDC or ERDC-BAS; Employment Related Day Care-Basic. Helps low-income working families pay the cost of child care.

(8) GA; General Assistance. Cash assistance to low-income individuals with disabilities who do not have dependent children.

(9) GAM; General Assistance Medical. Medical assistance to clients who are eligible for the GA program but have not been found eligible for OSIPM benefits.

(10) HSP; Housing Stabilization Program. A program that helps low-income families obtain stable housing. The program is operated through the Housing and Community Services Department through community-based, service-provider agencies. The Department's rules for the program (OAR 461-135-1305 to 461-135-1335) were repealed July 1, 2001.

(11) JOBS; Job Opportunity and Basic Skills. An employment program for REF, REFM, and TANF clients. JOBS helps these clients attain self-sufficiency through training and employment. The program is part of Welfare Reform.

(12) JOBS Plus. Provides subsidized jobs rather than SNAP or TANF benefits. For TANF clients, JOBS Plus is a component of the JOBS Program; for SNAP clients and noncustodial parents of children receiving

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TANF, it is a separate employment program. Eligibility for TANF clients, SNAP clients, and noncustodial parents of children receiving TANF is determined by the Department. Eligibility for UI recipients is determined by the Oregon State Employment Department. When used alone, JOBS Plus includes only clients whose JOBS Plus program participation is through the Department of Human Services. JOBS Plus administered through the Oregon State Employment Department is known in chapter 461 of the Oregon Administrative Rules as Oregon Employment Department UI JOBS Plus. The following acronyms are used for specific categories:

- (a) TANF-PLS; Clients eligible for JOBS Plus based on TANF.
- (b) SNAP-PLS; Clients eligible for JOBS Plus based on SNAP.
- (c) NCP-PLS; Noncustodial parents of children receiving TANF.

(13) JPI; Job Participation Incentive. An additional \$10 food benefit to help increase the ability of single parents with small children, that meet federal TANF participation rate, to meet the nutritional needs of their families.

(14) LIS; Low-Income Subsidy. The Low-Income Subsidy program is a federal assistance program for Medicare clients who are eligible for extra help meeting their Medicare Part D prescription drug costs.

(15) OFSET. The Oregon Food Stamp Employment Transition Program, which helps SNAP program benefit recipients find employment. This program is mandatory for some SNAP program benefit recipients.

(16) OSIP; Oregon Supplemental Income Program. Cash supplements and special need payments to persons who are blind, disabled, or 65 years of age or older. When used alone, OSIP refers to all OSIP programs. The following acronyms are used for OSIP subprograms:

(a) OSIP-AB; Oregon Supplemental Income Program — Aid to the Blind.

(b) OSIP-AD; Oregon Supplemental Income Program — Aid to the Disabled.

(c) OSIP-EPD; Oregon Supplemental Income Program - Employed Persons with Disabilities program. This program provides Medicaid coverage for employed persons with disabilities with adjusted income less than 250 percent of the Federal Poverty Level.

(d) OSIP-OAA; Oregon Supplemental Income Program - Old Age Assistance.

(17) OSIPM; Oregon Supplemental Income Program Medical. Medical coverage for elderly and disabled individuals. When used alone, OSIPM refers to all OSIP-related medical programs. The following codes are used for OSIPM subprograms:

(a) OSIPM-AB; Oregon Supplemental Income Program Medical — Aid to the Blind.

(b) OSIPM-AD; Oregon Supplemental Income Program Medical — Aid to the Disabled.

(c) OSIPM-EPD; Oregon Supplemental Income Program Medical — Employed Persons with Disabilities program. This program provides Medicaid coverage for employed persons with disabilities with adjusted income less than 250 percent of the Federal Poverty Level.

(d) OSIPM-OAA; Oregon Supplemental Income Program Medical — Old Age Assistance.

(e) OSIPM-IC; Oregon Supplemental Income Program Medical — Independent Choices

(18) The Post-TANF program provides a monthly transitional payment to employed clients who are no longer eligible for the Pre-TANF or TANF programs due to earnings, and meet the other eligibility requirements.

(19) The Pre-TANF program is an up-front assessment and resource-search program for TANF applicant families. The intent of the program is to assess the individual's employment potential; determine any barriers to employment or family stability; develop an individualized case plan that promotes family stability and financial independence; help individuals find employment or other alternatives; and provide basic living expenses immediately to families in need.

(20) QMB; Qualified Medicare Beneficiaries. Programs providing payment of Medicare premiums and one program also providing additional medical coverage for Medicare recipients. Each of these programs also is considered to be a Medicare Savings Program (MSP). When used alone in a rule, QMB refers to all MSP. The following codes are used for QMB subprograms:

(a) QMB-BAS; Qualified Medicare Beneficiaries - Basic. The basic QMB program.

(b) QMB-DW; Qualified Medicare Beneficiaries - Disabled Worker. Payment of the Medicare Part A premium for people under age 65 who have lost eligibility for Social Security disability benefits because they have become substantially gainfully employed.

(c) QMB-SMB; Qualified Medicare Beneficiaries - Specified Limited Medicare Beneficiary. Payment of the Medicare Part B premium only. There are no medical benefits available through QMB-SMB.

(d) QMB-SMF; Qualified Medicare Beneficiaries - Qualified Individuals. Payment of the Medicare Part B premium only. There are no medical benefits available through QMB-SMF. This program has a 100-percent federal match, but also has an allocation that, if reached, results in the closure of the program.

(21) REF; Refugee Assistance. Cash assistance to low-income refugee singles or married couples without children.

(22) REFM; Refugee Assistance Medical. Medical coverage for low-income refugees.

(23) The Repatriate Program helps Americans resettle in the United States if they have left a foreign land because of an emergency situation.

(24) SFDNP; Senior Farm Direct Nutrition Program. Food vouchers for low income seniors. Funded by a grant from the United States Department of Agriculture.

(25) SFPSS; State Family Pre-SSI/SSDI Program. A voluntary program providing cash assistance and case management services to families when at least one TANF eligible adult in the household has an impairment (see OAR 461-125-0260) and is or will be applying for Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI).

(26) SNAP; Supplemental Nutrition Assistance Program. Helps low-income households maintain proper nutrition by giving them the means to purchase food. SNAP used to be known as FS or Food Stamps, any reference to SNAP also includes FS and Food Stamps.

(27) TA-DVS; Temporary Assistance for Domestic Violence Survivors. Addresses the needs of clients threatened by domestic violence.

(28) TANF; Temporary Assistance for Needy Families. Cash assistance for families when children in those families are deprived of parental support because of continued absence, death, incapacity, or unemployment.

Stat. Auth.: ORS 411.060, 411.404, 411.706, 411.816, 412.014, 412.049, 414.025, 414.231  
Stats. Implemented: ORS 411.060, 411.404, 411.704, 411.706, 411.816, 412.014, 412.049, 414.025, 414.231, 414.826, 414.831, 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 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 35-1992, f. 12-31-92, cert. ef. 1-1-93; AFS 16-1993, f. & cert. ef. 9-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; 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 17-1996, f. 4-29-96, cert. ef. 5-1-96; 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 9-1997, f. & cert. ef. 7-1-97; AFS 4-1998, f. 2-25-98, cert. ef. 3-1-98; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 25-1998, f. 12-18-98, 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; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 11-2001, f. 6-29-01, cert. ef. 7-1-01; 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; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 7-2003, f. & cert. ef. 4-1-03; 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 7-2005, f. & cert. ef. 7-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 8-2006, f. & cert. ef. 6-1-06; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; 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 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 29-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; 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 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 9-2012, f. 3-29-12, cert. ef. 4-1-12; SSP 22-2013(Temp), f. & cert. ef. 8-23-13 thru 2-19-14; 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 14-2014(Temp), f. & cert. ef. 6-26-14 thru 12-23-14; SSP 16-2014, f. & cert. ef. 7-1-14

## 461-115-0030

### Date of Request

(1) For all programs covered by Chapter 461 of the Oregon Administrative Rules, the client or someone authorized to act on behalf of the client must contact the Department or use another appropriate method to request benefits (see OAR 461-115-0150). The request may be oral or in writing. The request starts the application process.

(2) The date of request is one of the following:

(a) In the EA, ERDC, GA, OSIP, REF, and TANF programs and for support service payments in the JOBS program authorized by OAR 461-190-0211, the date of request is the day the request for benefits is received by the Department.

(b) In the SNAP program, this section does not apply. See OAR 461-115-0040.

(c) In the GAM, OSIPM, QMB, and REFM programs, for a new applicant, the date of request is determined as follows:

(A) The day the request for medical benefits is received by a Department representative, except as described in paragraph (B) of this subsection.

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(B) If the request for medical benefits is received by a Department representative no later than the next business day after medical services are received, the date of request is the day these medical services were received.

(d) In the OSIPM, QMB, and REFM programs, for a current recipient, the date of request is one of the following:

(A) The date the client reports a change requiring a redetermination of eligibility.

(B) The date the Department initiates a review.

(C) The date the client establishes a date of request by contacting the Department orally or in writing or by submitting an application.

(e) In the SFPSS program:

(A) Except as provided in paragraph (B) of this subsection, the date of request is the day the client signs the program's Interim Assistance Agreement.

(B) The date of request for support service payments is the day the request for benefits is received by the Department.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.404, 411.704, 411.706, 411.816, 412.014, 412.049, 414.025, 414.826, 414.831, 414.839

Stats. Implemented: ORS 409.050, 411.060, 411.070, 411.404, 411.704, 411.706, 411.816, 412.014, 412.049, 414.025, 414.826, 414.831, 414.839

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; AFS 5-2000, f. 2-29-00, cert. ef. 3-1-00; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 21-2004, f. & cert. ef. 10-1-04; 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 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 12-2008(Temp), f. & cert. ef. 4-17-08 thru 6-30-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 22-2009(Temp), f. & cert. ef. 8-28-09 thru 2-21-10; 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 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 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 16-2014, f. & cert. ef. 7-1-14

## 461-115-0430

### Periodic Redeterminations; Not EA, ERDC, EXT, OHP, REF, REFM, SNAP, or TA-DVS

The Department periodically redetermines the eligibility of clients for benefits and assigns a redetermination date by which the next determination is required. The Department selects the redetermination date based on the client's circumstances and according to the following requirements:

(1) In the GA and GAM programs, the Department determines eligibility each 12 months.

(2) In the OSIP and OSIPM programs, the Department determines eligibility each 12 months for clients who are not eligible for SSI. No redetermination is required for clients who are eligible for SSI.

(3) In the QMB program, the Department determines eligibility each 12 months for clients who are not eligible for SSI. For QMB recipients who are also eligible for OSIPM, a redetermination for QMB is completed with the redetermination of OSIPM.

(4) In the SFPSS program, the Department redetermines eligibility at least once every 12 months. The Department redetermines program eligibility by redetermining eligibility for the TANF program.

(5) In the TANF program, benefits will end the last day of the certification period (see OAR 461-001-0000). The Department redetermines eligibility according to the following schedule:

(a) At least once every six months for each of the following:

(A) Clients not participating in an activity (see OAR 461-001-0025) of an open case plan (see OAR 461-001-0025).

(B) Clients who are currently serving a JOBS disqualification.

(b) At least once every 12 months for all other clients.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.704, 411.706, 412.014, 412.049, 414.025, 414.231, 414.826, 414.831, 414.839

Stats. Implemented: ORS 411.060, 411.070, 411.404, 411.704, 411.706, 412.014, 412.049, 414.025, 414.231, 414.826, 414.831, 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 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; 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 2-1994, f. & cert. ef. 2-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 26-1996, 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 9-1999, f. & cert. ef. 7-1-99; AFS 11-1999, f. & cert. ef. 10-1-99; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 17-2004, f. & cert. ef. 7-1-04; 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 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 37-2012, f. 12-28-12, cert. ef. 1-1-13; 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 16-2014, f. & cert. ef. 7-1-14

## 461-120-0030

### State of Residence for an Individual in a Medical Facility

In the GAM, OSIPM, QMB, and REFM programs, the residency of an individual living in a state or private medical facility such as a hospital, mental hospital, nursing home, or convalescent center is determined as follows:

(1) An individual 21 years of age or older who is capable of indicating intent to reside is considered to be --

(a) A resident of the state where the individual is living with the intention to remain permanently or for an indefinite period, except when subsection (b) of this section indicates otherwise.

(b) When a state agency of another state places the individual (other than a child funded under Title IV-E), the individual is considered to be a resident of the state that makes the placement.

(2) An individual 21 years of age or older who became incapable of indicating intent to reside after attaining 21 years of age is considered to be a resident of the state where the facility is located unless the individual was placed in the facility by a state agency of another state. When a state agency of another state places an individual, the individual is considered to be a resident of the state that makes the placement.

(3) For an individual less than 21 years of age who is incapable of forming an intent to reside, or an individual of any age who became incapable of forming that intent before attaining 21 years of age (see OAR 461-120-0050), 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.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.706, 411.816, 412.006, 412.014, 412.049, 412.124, 414.231

Stats. Implemented: ORS 411.060, 411.070, 411.404, 411.706, 411.816, 412.006, 412.014, 412.049, 412.124, 414.231

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; 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

## 461-120-0050

### Incapable of Stating Intent to Reside; OSIPM, QMB, REFM, and SAC

In the OSIPM, QMB, and REFM programs, an individual is presumed to be incapable of forming an intent to reside if the individual meets the requirements of one or more of the following sections:

(1) The individual is assessed with an IQ of 49 or less, based on a test acceptable to the Department.

(2) The individual has a mental age of seven years or less, based on tests acceptable to the Department.

(3) The individual is judged legally incompetent by a court of competent jurisdiction.

(4) 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 411.060, 411.070, 411.404, 411.706, 414.231

Stats. Implemented: ORS 411.060, 411.070, 411.404, 411.706, 414.231

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; 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

## 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 amend-

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ed 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) An Afghan or Iraqi alien granted Special Immigration Status (SIV) under section 101(a)(27) of the INA.

(i) In all programs except the SNAP program—a battered spouse or dependent child who meets the requirements of 8 U.S.C. 1641(c) and is in the United States on a conditional resident status, as determined by the U.S. Citizenship and Immigration Services.

(j) In the SNAP program—a non-citizen who has been battered or subjected to extreme cruelty in the United States by a spouse or parent or by a member of the spouse or parent’s family residing in the same household as the non-citizen at the time of the abuse; a non-citizen whose child has been battered or subjected to battery or cruelty; or a non-citizen child whose parent has been battered.

(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.

(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) 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).

(d) 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).

(4) In the OSIPM and QMB programs:

(a) A qualified non-citizen meets the alien status requirements if the individual satisfies one of the following situations:

(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) Is 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.

(E) Meets the alien status requirements in section (2), (6), or (7) of this rule.

(F) In the OSIPM program, is receiving SSI benefits.

(G) In the QMB program, is receiving SSI and Medicare Part A benefits.

(b) A non-citizen meets the alien status requirements if the individual is 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).

(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) Except as provided in section (2), subsection (4)(a), and sections (5) and (6) of this rule, a non-citizen who entered the United States or was given qualified non-citizen status on or after August 22, 1996:

(a) Is ineligible for the OSIPM and QMB programs for five years beginning on the date the non-citizen received his or her qualified non-citizen status.

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(b) Meets the alien status requirement following the five-year period.

(8) 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.

(9) 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.

(10) 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, 414.831

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

## 461-120-0210

### Requirement to Provide Social Security Number (SSN)

(1) In the CAWEM, ERDC, REF, and REFM programs, a member of a need group (see OAR 461-110-0630) or a benefit group (see OAR 461-110-0750) is not required to provide or apply for a social security number (SSN). In these programs, the Department may request that a member of the filing group or need group provide an SSN on a voluntary basis.

(2) In the EA and TA-DVS programs, an individual must provide his or her SSN if the individual can.

(3) Except as provided in section (5) of this rule, in the OSIPM and QMB programs:

(a) An individual is not required to apply for or provide an SSN.

(A) If the individual does not have an SSN; and

(B) May only be issued an SSN for a valid non-work reason in accordance with 20 CFR 422.104.

(b) When subsection (a) does not apply, to be included in the benefit group, an individual must:

(A) Provide a valid SSN for the individual; or

(B) Apply for a number if the individual does not have a valid one and provide the SSN when it is received.

(4) Except as provided in sections (5) to (7) of this rule, in the SNAP and TANF programs, to be included in the need group, an individual (other than an unborn) must:

(a) Provide a valid SSN for the individual; or

(b) Apply for a number if the individual does not have one and provide the SSN when it is received.

(5) In the GA, GAM, OSIPM, QMB, and SNAP programs, an individual is not required to apply for or provide an SSN if the individual is:

(a) A member of a religious sect or division of a religious sect that has continuously existed since December 31, 1950; and

(b) Adheres to its tenets or teachings that prohibit applying for or using an SSN.

(6) The requirement to apply for or provide the SSN is delayed as follows:

(a) In the SNAP program:

(A) An applicant eligible for expedited services may receive his or her first full month's allotment without meeting the SSN requirement but must meet the requirement before receiving a second full month's allotment.

# ADMINISTRATIVE RULES

(B) Before applying for or providing an SSN, a newborn may be included in a benefit group (see OAR 461-110-0750) for six months following the date the child is born or until the group's next recertification, whichever is later.

(b) In the TANF program, without meeting the SSN requirements of section (4) of this rule, a newborn child born in Oregon may be added to the benefit group for six months following the child's date of birth or until the next redetermination of eligibility of the filing group (see OAR 461-110-0330), whichever is sooner.

(7) In the SNAP program:

(a) An individual who refuses or fails without good cause to provide or apply for an SSN when required by this rule is ineligible to participate. This period of ineligibility continues until the individual provides the SSN to the Department.

(b) An individual may participate in SNAP for one month in addition to the month of application, if the individual can show good cause why the application for an SSN has not been completed. To continue to participate, the individual must continue to show good cause each month until the application for an SSN is complete with Social Security Administration.

(c) An individual meets the good cause requirement in subsections (a) and (b) of this section if the individual provides evidence or collateral information that the individual applied for or made every effort to supply the Social Security Administration with the necessary information to complete the application process. Delays due to illness not associated with a disability (see OAR 461-001-0015), lack of transportation, or temporary absence do not qualify as good cause under this rule.

(8) This rule authorizes or requires the collection of an SSN for each of the following purposes.

(a) The determination of eligibility for benefits. The SSN is used to verify income and other assets, and match with other state and federal records such as the Internal Revenue Service (IRS), Medicaid, child support, Social Security benefits, and unemployment benefits.

(b) The preparation of aggregate information and reports requested by funding sources for the program providing benefits.

(c) The operation of the program applied for or providing benefits.

(d) Conducting quality assessment and improvement activities.

(e) Verifying the correct amount of payments, recovering overpaid benefits, and identifying any individual receiving benefits in more than one household.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.706, 411.816, 412.014, 412.049  
Stats. Implemented: ORS 411.060, 411.070, 411.404, 411.704, 411.706, 411.816, 412.014, 412.049, 414.025, 414.826, 414.831, 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 20-1992, 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 9-1999, f. & cert. ef. 7-1-99; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; 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 29-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10; 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 41-2010, f. 12-30-10, cert. ef. 1-1-11; SSP 10-2011, f. 3-31-11, cert. ef. 4-1-11; SSP 9-2012, f. 3-29-12, cert. ef. 4-1-12; SSP 25-2012, f. 6-29-12, cert. ef. 7-1-12; SSP 12-2013(Temp), f. & cert. ef. 5-29-13 thru 11-25-13; 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 16-2014, f. & cert. ef. 7-1-14

## 461-120-0315

### Medical Assignment

In the GAM, OSIPM, QMB, and REFM programs:

(1) By signing the application for assistance, a client agrees to turn over the rights of each member of the benefit group (see OAR 461-110-0750) to reimbursement for medical care costs to the Department.

(a) If a client or the client's authorized representative (see OAR 461-115-0090) refuses to assign the rights to reimbursement for medical care costs to the Department, the filing group is ineligible until the client complies with this requirement. This includes a client eligible for long term care (see OAR 461-001-0000) insurance payments who fails to comply as described in subsection (b) of this section.

(b) When a client has long term care insurance, the client complies with the requirements of this rule by reducing the Department's share of the long term care service costs by taking the following actions for the entire period of time that the client is eligible for Department-covered long term care services:

(A) For a client in a nursing facility:

(i) Submitting the necessary paperwork to receive the long term care insurance payments and designating the long term care facility as the payee for the long term care insurance benefits; or

(ii) When the insurance company will not pay the long term care insurance benefits directly to the long term care facility, submitting the necessary paperwork to receive insurance payments and then promptly turning

over the long term care insurance payments to the long term care facility upon receipt.

(B) For a client in community based care (see OAR 461-001-0000):

(i) Submitting the necessary paperwork to receive the long term care insurance payments and designating the Department as the payee for the long term care insurance benefits; or

(ii) When the insurance company will not pay the long term care insurance benefits directly to the Department, submitting the necessary paperwork to receive the insurance payments and then promptly turning over the long term care insurance payments to the Department upon receipt.

(2) The Department may refuse to pay medical expenses for anyone in the benefit group when another party or resource should pay first.

(3) The amount the Department may collect in reimbursement is limited to the amount of medical services paid by the Department on the client's behalf.

(4) The Department establishes an overpayment if it is discovered after-the-fact that during any period of time a client or another individual submitting a long term care insurance claim on the client's behalf received a long term care insurance payment that was not turned over to the long term care facility or Department as required by subsection (1)(b) of this rule.

Stat. Auth.: ORS 411.060, 411.404, 411.706, 414.231  
Stats. Implemented: ORS 411.060, 411.404, 411.706, 414.231  
Hist.: AFS 28-1992, f. & cert. ef. 10-1-92; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; SSP 29-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; SSP 17-2011, f. & cert. ef. 7-1-11; 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

## 461-120-0510

### Age Requirements for Clients to Receive Benefits

(1) If the year of an individual's birth is known but the month is unknown, the month of birth is presumed to be July. If the date of birth is unknown, the date of birth is presumed to be the first of the month.

(2) To be eligible for the TANF program:

(a) A dependent child (see OAR 461-001-0000) must be:

(A) Under 18 years of age; or

(B) Under 19 years of age and regularly attending school (see subsection (c) of this section) full time, as determined by the school.

(b) A caretaker relative (see OAR 461-001-0000) may be any age.

(c) "Regularly attending school" means enrolled in and attending any of the following:

(A) A school in grade 12 or below, including home schooling approved by the local school district.

(B) GED classes in lieu of high school.

(C) A course of vocational or technical training, including Job Corps, in lieu of high school.

(D) The Oregon School for the Deaf.

(d) The student's full-time status is defined by the school.

(e) Regular attendance continues when a student misses school because of an illness, family emergency, or vacation, as long as the student intends to return to school. Students are considered to be in attendance for the full month in which they complete or discontinue school or training.

(3) To be eligible for payment of child care costs for the ERDC or TANF program, a child must be:

(a) Under 12 years of age for the ERDC program or under 13 years of age for the TANF program; or

(b) Under 18 years of age; and

(A) Physically or mentally incapable of selfcare;

(B) Under court supervision;

(C) Receiving foster care;

(D) Eligible for the special need rate for child care in OAR 461-155-0150; or

(E) Subject to circumstances that significantly compromise the child's safety or the caretaker's ability to work or participate in an assigned activity if child care is not available.

(4) To be eligible for the OSIP-AB, OSIPM-AB, QMB-BAS, QMB-SMB, REFM, or SNAP programs, a client may be any age.

(5) To be eligible for the GA and GAM programs, a client must be:

(a) Eighteen years of age or older and less than 65 years of age; or

(b) Sixty-five years of age or older and must be a non-citizen who meets the requirements of OAR 461-120-0125.

(6) To be eligible for the OSIP-AD (except OSIP-EPD), OSIPM-AD (except OSIPM-EPD), and QMB-DW programs, a client must be under 65 years of age.

# ADMINISTRATIVE RULES

(7) To be eligible for the OSIP-EPD and OSIPM-EPD programs, the client must be 18 years of age or older or be legally emancipated.

(8) To be eligible for the OSIP-OAA or OSIPM-OAA programs, a client must be 65 years of age or older.

(9) To be eligible for the REF program, a client must be:

(a) 18 years of age or older;

(b) A legally emancipated minor; or

(c) Part of a TANF filing group (see OAR 461-110-0310) that is ineligible for the TANF program.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.816, 412.049

Stats. Implemented: ORS 411.060, 411.070, 411.404, 411.816, 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 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 35-1992, f. 12-31-92, cert. ef. 1-1-93; 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 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; 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; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; 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 1-2000, f. 1-13-00, cert. ef. 2-1-00; AFS 18-2001(Temp), f. 8-31-01, cert. ef. 9-1-01 thru 12-31-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; 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 17-2004, f. & cert. ef. 7-1-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 29-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; SSP 25-2011, f. 9-30-11, cert. ef. 10-1-11; 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

## 461-135-0010

### Assumed Eligibility for Medical Programs

(1) This rule sets out when a client is assumed eligible for certain medical programs because the client receives or is deemed to receive benefits of another program.

(2) A pregnant woman who is eligible for and receiving benefits until the day the pregnancy ends is assumed eligible for the OSIPM program until the last day of the calendar month in which the 60th day after the last day of the pregnancy falls.

(3) A pregnant woman who was eligible for and receiving medical assistance under any Medicaid program and becomes ineligible while pregnant is assumed eligible for Medicaid until the last day of the calendar month in which the 60th day after the last day of the pregnancy falls.

(4) A child (see OAR 461-001-0000) born to a mother eligible for and receiving OSIPM benefits is assumed eligible for medical benefits under this section until the end of the month the child turns one year of age.

(5) The individuals described in subsection (a) and (b) of this section are assumed eligible for OSIPM (except OSIPM-EPD) unless subsection (c), (d), or (e) of this section applies:

(a) A recipient of SSI benefits.

(b) An individual deemed eligible for SSI under Sections 1619(a) or (b) of the Social Security Act (42 U.S.C. 1382h(a) or (b)), which cover individuals with disabilities whose impairments have not changed but who have become gainfully employed and have continuing need for OSIPM.

(c) An individual described in subsection (a) or (b) of this section who is in a nonstandard living arrangement (see OAR 461-001-0000) is not eligible for long-term care (see 461-001-0000) services if the individual would otherwise be ineligible for OSIPM due to a disqualifying transfer of assets (461-140-0210 to 461-140-0300 regulate the effect of a transfer of assets on a client).

(d) An individual described in subsection (a) or (b) of the section who is in a nonstandard living arrangement is not assumed eligible for long-term care services if countable resources exceed the limit after performing the calculation under OAR 461-160-0580.

(e) An individual described in subsection (a) or (b) of the section who does not meet the pursuit of assets requirements (see OAR 461-120-0330), the health care coverage requirements (see 461-120-0345), or the residency requirements (see 461-120-0010) is not assumed eligible for OSIPM.

(6) For the purposes of this section the definition of a "child" means an unmarried individual under age 19 and includes natural, step, and adoptive children. A child found eligible for OSIPM is assumed eligible until the end of the twelfth month following the determination of the child's OSIPM eligibility unless the child:

(a) No longer meets the definition of a child given in this section;

(b) Moves out of state; or

(c) Voluntarily ends benefits.

(7) A client who receives both benefits under Part A of Medicare and SSI benefits is assumed eligible for the QMB-BAS program unless the individual does not meet the pursuit of assets requirements (see OAR 461-120-

0330), the health care coverage requirements (see OAR 461-120-0345), or the residency requirements (see OAR 461-120-0010).

Stat. Auth.: ORS 409.050, 411.060, 411.404 & 412.049

Stats. Implemented: ORS 409.010, 411.060, 411.070, 411.404, 412.049 & 414.025

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 28-1992, f. & cert. ef. 10-1-92; AFS 1-1993, f. & cert. ef. 2-1-93; 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 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 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 12-1999(Temp), f. & cert. ef. 10-1-99 thru 1-31-00; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; 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 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 7-2007, f. 6-29-07, cert. ef. 7-1-07; 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 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 6-2009(Temp), f. & cert. ef. 4-1-09 thru 9-28-09; SSP 10-2009(Temp), f. & cert. ef. 5-6-09 thru 9-28-09; SSP 27-2009, f. & cert. ef. 9-29-09; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11; SSP 1-2012(Temp), f. & cert. ef. 1-13-12 thru 7-11-12; SSP 25-2012, f. 6-29-12, cert. ef. 7-1-12; SSP 24-2013, f. & cert. ef. 10-1-13; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 37-2013, f. 12-31-13, cert. ef. 1-1-14; SSP 16-2014, f. & cert. ef. 7-1-14

## 461-135-0875

### Specific Requirements; Retroactive Eligibility

(1) Clients are evaluated for retroactive eligibility as follows:

(a) Clients applying for Medicaid are evaluated for retroactive eligibility in the OSIPM, QMB-DW, QMB-SMB, QMB-SMF, and REFM programs. This includes deceased individuals who would have been eligible for Medicaid covered services had they, or someone acting on their behalf, applied.

(b) Clients found ineligible for the OSIPM program solely because they do not meet the citizenship requirements of OAR 461-120-0125. Clients eligible under this subsection are eligible only for CAWEM program benefits (see OAR 461-135-1070).

(2) If eligible for medical assistance retroactively, the client's eligibility cannot start earlier than the date indicated by OAR 461-180-0140.

(3) In the QMB-BAS program, there are no retroactive medical benefits.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

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 8-1993(Temp), f. & cert. ef. 4-26-93; 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 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 5-2000, f. 2-29-00, cert. ef. 3-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 17-2008, f. & cert. ef. 7-1-08; 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 16-2014, f. & cert. ef. 7-1-14

## 461-135-0990

### Specific Requirements; Reimbursement of Cost-Effective, Employer-Sponsored Health Insurance Premiums

(1) Clients or an eligible applicant (see section (2) of this rule) for a client in the CEM, EXT, GAM, MAA, MAF, OHP (except OHP-CHP and OHP-OPU), and OSIPM programs may be reimbursed for their share of the premiums for private or employer-sponsored group health insurance if:

(a) The insurance covers a member of the benefit group (see OAR 461-110-0750);

(b) The insurance coverage is a comprehensive major medical plan that includes inpatient and outpatient hospital, physician, lab, x-ray and full prescription coverage; and

(c) The premium is cost-effective (see OAR 461-155-0360 and OAR 410-120-1960).

(2) An "eligible applicant" may be a non-Medicaid individual living in or outside of the household. The Department may pay a portion of or the entire premium if payment of the premium for the non-Medicaid individual is necessary in order to enroll the Department client in the group health plan (see OAR 410-120-1960).

Stat. Auth.: ORS 411.060, 411.070, 414.042

Stats. Implemented: ORS 411.060, 411.070, 414.042

Hist.: AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; 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 15-1999, f. 11-30-99, cert. ef. 12-1-99; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 29-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; SSP 35-2011, f. 12-27-11, cert. ef. 1-1-12; SSP 16-2014, f. & cert. ef. 7-1-14

## 461-155-0360

### Pursuit of Cost-Effective Employer Sponsored Health Insurance

(1) This rule applies to the following medical assistance programs: CEM, EXT, GAM, MAA, MAF, OHP (except OHP-CHP and OHP-OPU), and OSIPM and is for the purpose of applying OAR 461-120-0345.

# ADMINISTRATIVE RULES

(2) The Health Insurance Group (HIG) determines if employer sponsored health insurance meets the criteria as cost effective for the purpose of OAR 410-120-1960.

(3) If the insurance is determined to be cost effective and the client or eligible applicant pursues the insurance, HIG will authorize reimbursement of the client or eligible applicant's portion of the premium per OAR 410-120-1960.

(4) If the insurance is determined to be cost effective and the client or eligible applicant fails to pursue cost effective employer sponsored insurance, the Department will apply a penalty per OAR 461-120-0345.

Stat. Auth.: ORS 411.060, 414.042

Stats. Implemented: ORS 411.060, 414.042

Hist.: AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 29-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; SSP 35-2011, f. 12-27-11, cert. ef. 1-1-12; SSP 16-2014, f. & cert. ef. 7-1-14

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**Rule Caption:** Increasing the personal needs allowance for some individuals receiving long-term care

**Adm. Order No.:** SSP 17-2014(Temp)

**Filed with Sec. of State:** 7-1-2014

**Certified to be Effective:** 7-1-14 thru 12-28-14

**Notice Publication Date:**

**Rules Amended:** 461-155-0250, 461-160-0620

**Subject:** OAR 461-155-0250 about income and payment standards in the Oregon Supplemental Income Program Medical (OSIPM) is being amended to increase the allowance for clothing and personal incidentals for some individuals in nursing facilities or intermediate care facilities for the mentally retarded (ICF/MR) from \$30 to \$60. Additionally, this rule is being amended to adopt a payment standard for individuals with countable income (including any SSI) that is less than \$60. The payment standard is the difference between the individual's countable income (including any SSI) and \$60.

OAR 461-160-0620 about income deductions and client liability for long-term care or home and community-based care in the OSIPM program is being amended to increase the deduction for personal needs for an individual receiving long-term care from \$30 to \$60. Individuals required to contribute all or part of their adjusted income to the cost of care will receive an increased deduction, and individuals with countable income (including any SSI) that is less than \$60 per month will receive a payment equaling the difference between the individual's countable income (including any SSI) and \$60.

**Rules Coordinator:** Kris Skaro—(503) 945-6067

## 461-155-0250

### Income and Payment Standard; OSIPM

(1) A client who is assumed eligible per OAR 461-135-0010(6) is presumed to meet the income limits for the OSIPM program.

(2) A client in a nonstandard living arrangement (see OAR 461-001-0000) meeting the requirements of OAR 461-135-0750, who is not assumed eligible and does not meet the income standards set out in section (4) of this rule, must have countable (see OAR 001-0000) income that is equal to or less than 300 percent of the full SSI standard for a single individual (except OSIPM-EPD) or have established a qualifying trust as specified in 461-145-0540(9)(c).

(3) The OSIPM (except OSIPM-EPD) adjusted income standard takes into consideration the need for shelter (housing and utilities), food, and other items. The standard is itemized as follows:

(4) A client, other than one identified in section (1), (2), or (6) of this rule, must have adjusted income below the standard in this section. The Department determines the adjusted number in the household under OAR 461-155-0020.

(5) In the OSIPM (except OSIPM-EPD) program, an individual in a nursing facility or an ICF-MR are allowed the following amounts for clothing and personal incidentals:

(a) For an individual who receives a VA pension based on unreimbursed medical expenses (UME), \$90 is allowed.

(b) For all other individuals, \$60 is allowed.

(c) For an individual identified in subsection (b) of this section with countable income (including any SSI) that is less than \$60, the payment standard is equal to the difference between the individual's countable income (including any SSI) and \$60. For the purposes of this subsection,

countable income includes income that would otherwise be countable for an individual who is assumed eligible under OAR 461-135-0010.

(6) In the OSIPM-EPD program, the adjusted earned income limit is 250 percent of the federal poverty level for a family of one.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.704, 411.706

Stats. Implemented: ORS 411.060, 411.070, 411.404, 411.704, 411.706

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; 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 25-1991, f. 12-30-91, cert. ef. 1-1-92; AFS 35-1992, f. 12-31-92, cert. ef. 1-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; 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 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 3-1999, f. 3-31-99, cert. ef. 4-1-99; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; 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 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 10-2003(Temp) f. & cert. ef. 5-1-03 thru 9-30-03; SSP 26-2003, f. & cert. ef. 10-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; 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 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 4-2006, f. & cert. ef. 3-1-06; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; 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 2-2007(Temp), f. & cert. ef. 3-1-07 thru 3-31-07; Suspended by SSP 3-2007(Temp), f. & cert. ef. 3-9-07 thru 6-30-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; Suspended by SSP 5-2007(Temp), f. 3-30-07, cert. ef. 4-1-07 thru 6-30-07; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 6-2008(Temp), f. 2-29-08, cert. ef. 3-1-08 thru 8-28-08; 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 2-2009(Temp), f. 2-27-09, cert. ef. 3-1-09 thru 8-28-09; SSP 13-2009, f. & cert. ef. 7-1-09; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; SSP 35-2011, f. 12-27-11, cert. ef. 1-1-12; SSP 5-2012(Temp), f. & cert. ef. 2-1-12 thru 7-30-12; SSP 25-2012, f. 6-29-12, cert. ef. 7-1-12; SSP 39-2012(Temp), f. 12-28-12, cert. ef. 1-1-13 thru 6-30-13; SSP 37-2013, f. 12-31-13, cert. ef. 1-1-14; SSP 17-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14

## 461-160-0620

### Income Deductions and Client Liability; Long-Term Care Services or Home and Community-Based Care; OSIPM

(1) Deductions from income are made for a client residing in or entering a long-term care facility or receiving home and community-based care (see OAR 461-001-0030) as explained in subsections (3)(a) to (3)(h) of this rule.

(2) Except as provided otherwise in OAR 461-160-0610, the liability of the client is determined according to subsection (3)(i) of this rule.

(3) Deductions are made in the following order:

(a) One standard earned income deduction of \$65 is made from the earned income in the OSIPM-AD and OSIPM-OAA programs. The deduction is \$85 in the OSIPM-AB program.

(b) The deductions under the plan for self-support as allowed by OAR 461-145-0405.

(c) One of the following need standards:

(A) A \$60 personal needs allowance for a client receiving long-term care services.

(B) A \$90 personal needs allowance for a client receiving long-term care services who is eligible for VA benefits based on unreimbursed medical expenses. The \$90 allowance is allowed only when the VA benefit has been reduced to \$90.

(C) For a client who receives home and community-based care:

(i) Except as provided in subparagraph (ii) of this paragraph, the OSIPM maintenance standard.

(ii) For a client who receives in-home services, the OSIPM maintenance standard plus \$500.

(d) A community spouse monthly income allowance is deducted from the income of the institutionalized spouse to the extent that the income is made available to or for the benefit of the community spouse, using the following calculation.

(A) Step 1 — Determine the maintenance needs allowance. \$1,967 is added to the amount over \$590 that is needed to pay monthly shelter expenses for the principal residence of the couple. This sum or \$2,931 whichever is less, is the maintenance needs allowance. For the purpose of this calculation, shelter expenses are the rent or home mortgage payment (principal and interest), taxes, insurance, required maintenance charges for a condominium or cooperative, and the full standard utility allowance for the SNAP program (see OAR 461-160-0420).

(B) Step 2 — Compare maintenance needs allowance with community spouse's countable income. The countable income of the community spouse is subtracted from the maintenance needs allowance determined in step 1. The difference is the income allowance unless the allowance described in step 3 is greater.

(C) Step 3 — If a spousal support order or exceptional circumstances resulting in significant financial distress require a greater income allowance than that calculated in step 2, the greater amount is the allowance.

(e) A dependent income allowance as follows:

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(A) For a case with a community spouse, a deduction is permitted only if the monthly income of the eligible dependent is below \$1,967. To determine the income allowance of each eligible dependent:

(i) The monthly income of the eligible dependent is deducted from \$1,967.

(ii) One-third of the amount remaining after the subtraction in paragraph (A) of this subsection is the income allowance of the eligible dependent.

(B) For a case with no community spouse:

(i) The allowance is the TANF adjusted income standard for the client and eligible dependents.

(ii) The TANF standard is not reduced by the income of the dependent.

(f) Costs for maintaining a home if the client meets the criteria in OAR 461-160-0630.

(g) Medical deductions allowed by OAR 461-160-0030 and 461-160-0055 are made for costs not covered under the state plan. This includes the public and private health insurance premiums of the community spouse and the client's dependent.

(h) After taking all the deductions allowed by this rule, the remaining balance is the adjusted income.

(i) The client liability is determined as follows:

(A) For a client receiving home and community-based care (except a client identified in OAR 461-160-0610(4)), the liability is the actual cost of the home and community-based care or the adjusted income of the client, whichever is less. This amount must be paid to the Department each month as a condition of being eligible for home and community-based care. In OSIPM-IC, the liability is subtracted from the gross monthly benefit.

(B) For a client who resides in a nursing facility, a state psychiatric hospital, an Intermediate Care Facility for the Mentally Retarded, or a mental health facility, there is a liability as described at OAR 461-160-0610.

(4) The deduction used to determine adjusted income for a GA and GAM client receiving long-term care services or home and community-based care is as follows:

(a) One standard earned income deduction of \$65 is made from the earned income for a client who is not blind; or

(b) One standard earned income deduction of \$85 is made from the earned income for a client who is blind.

Stat. Auth.: ORS 411.060, 411.070, 411.706

Stats. Implemented: ORS 411.060, 411.070, 411.706

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 17-1992, f. & cert. ef. 7-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 5-1993, f. & cert. ef. 4-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 6-1994, f. & cert. ef. 4-1-94; 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 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 15-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 5-1997, f. 4-30-97, cert. ef. 5-1-97; 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 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 3-1999, f. 3-31-99, cert. ef. 4-1-99; AFS 6-1999, f. & cert. ef. 4-22-99; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; 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 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 11-2001, f. 6-29-01, cert. ef. 7-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 16-2003, f. & cert. ef. 7-1-03; 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 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 8-2005(Temp), f. & cert. ef. 7-1-05 thru 10-1-05; SSP 9-2005(Temp), f. & cert. ef. 7-6-05 thru 10-1-05; 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 4-2007, f. 3-30-07, cert. ef. 4-1-07; 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 17-2008, f. & cert. ef. 7-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 13-2009, f. & cert. ef. 7-1-09; 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 35-2011, f. 12-27-11, cert. ef. 1-1-12; SSP 23-2012(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 37-2012, f. 12-28-12, cert. ef. 1-1-13; SSP 16-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SSP 25-2013, f. & cert. ef. 10-1-13; SSP 37-2013, f. 12-31-13, cert. ef. 1-1-14; SSP 3-2014, f. 1-31-14, cert. ef. 2-1-14; SSP 15-2014, f. & cert. ef. 7-1-14; SSP 17-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14

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**Rule Caption:** Changing OARs relating to eligibility for JOBS Participation Incentive (JPI)

**Adm. Order No.:** SSP 18-2014(Temp)

**Filed with Sec. of State:** 7-1-2014

**Certified to be Effective:** 7-1-14 thru 12-23-14

**Notice Publication Date:**

**Rules Amended:** 461-001-0000, 461-101-0010

**Subject:** OAR 461-001-0000 about definitions in chapter 461 and 461-101-0010 about program acronyms and overview were amended by temporary rule on June 26, 2014 to expand the JOBS Participation Incentive (JPI) to two-parent working families. On July 1, 2014, permanent amendments unrelated to JPI were filed to OAR

461-001-0000 and 461-101-0010, displacing the temporary changes filed on June 26, 2014. Therefore, the changes filed on June 26, 2014 are being filed again to incorporate the new permanent language and the JPI expansion.

**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 SDDSD), or any other agency formerly part of the Department of Human Services shall be taken to mean the Department of Human Services (DHS), except:

(a) The rule in which reference occurs only regulates programs covered by Chapter 461 of the Oregon Administrative Rules.

(b) OCCS medical program eligibility rules are set out in the 410-200 division of Oregon Administrative Rules.

(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, sexual assault, or stalking.

(3) "Adjusted income" means the amount determined by subtracting income deductions from countable income (see OAR 461-140-0010). Specific rules on the deductions are found in division 461-160.

(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 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 and benefit level for the payment month.

(10) "Cafeteria plan" means a written benefit plan offered by an employer in which:

(a) All participants are employees; and

(b) Participants can 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, 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. 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, REF, 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 who meets the requirements of one of the following paragraphs:

(A) Is one of the following relatives of the dependent child:

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(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 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 child's subsequent adoption).

(14) "Certification period" means the period for which a client 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 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.

(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 disabled people 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 — People 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 REF, REFM, and TANF programs, means the following:

(a) An individual who is not a caretaker relative 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 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, 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 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 the client, as specified in a case plan, intended to promote the ability of one or both parents to achieve or maintain family stability.

(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) "Income producing property" means any real or personal property that generates income for the financial group. 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, condominiums.

(35) "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).

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(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, for the purposes of calculating the correct divisor in OAR 461-140-0296, the month in which the client would have been eligible had it not been for the disqualifying transfer of assets.

(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 services if the client would have been eligible had it not been for the disqualifying transfer of assets.

(36) "In-kind income" means income in a form other than money (such as food, clothing, cars, furniture, and payments made to a third party).

(37) "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.

(38) "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 his or her life, certain rights to that property. In addition, a life estate is established when a member of the financial group (see OAR 461-110-0530) purchases a life estate interest in the home of another individual.

(39) "Lodger" means a member of the household group (see OAR 461-110-0210) who:

(a) Is not a member of the filing group; 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.

(40) "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).

(41) "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.

(42) "Marriage" means the union of two individuals who are legally married.

(43) "Microenterprise" means a sole proprietorship, partnership, or family business with fewer than five employees and capital needs no greater than \$35,000.

(44) "Minor parent", in the ERDC, REF, REFM, and TANF programs, means a parent under the age of 18.

(45) "Nonstandard living arrangement" is defined as follows:

(a) In the GA, GAM, OSIP, OSIPM, and QMB programs, a client is considered to be in a nonstandard living arrangement when the client is applying for or receiving services in any of the following locations:

(A) A nursing facility in which the client 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 non-standard living arrangement.

(b) In all programs except GA, GAM, OSIP, OSIPM, and QMB, non-standard 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.

(46) "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.

(47) "OCCS Medical Programs" refers to programs for which eligibility policy can be found in division 410-200 of Oregon Administrative Rule, and includes CEC, CEM, MAA, MAF, EXT, OHP, Substitute Care, BCCTP, and MAGI Medicaid/CHIP programs, including:

(a) MAGI Child;

(b) MAGI Parent or Other Caretaker Relative;

(c) MAGI Pregnant Woman; and

(d) MAGI CHIP.

(48) "Ongoing month" means one of the following:

(a) For all programs except the SNAP program, any month following the initial month 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 following the initial month of eligibility.

(49) "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.

(50) "Payment month" means, for all programs except EA, the calendar month for which benefits are issued.

(51) "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.

(52) "Periodic income" means income received on a regular basis less often than monthly.

(53) "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, and QMB programs: the client or client's spouse.

(e) For the REF and REFM programs: the applicant, caretaker, caretaker relative, or parent.

(54) "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 client was a resident in Oregon on January 1, 2008 or later; or

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(b) Issued in another state while the client 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.

(55) "Real property" means land, buildings, and whatever is erected on or affixed to the land and taxed as real property.

(56) "Reimbursement" means money or in-kind compensation provided specifically for an identified expense.

(57) "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.

(58) "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.

(59) "Shelter in kind" means an agency or person outside the financial group (see OAR 461-110-0530) provides the shelter of the financial group, or makes a payment to a third party for some or all of the shelter costs 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.

(60) "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.

(61) "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 (see OAR 461-110-0530).

(62) "Spouse" means an individual who is legally married to another individual.

(63) "Stable income" means income that is the same amount each time it is received.

(64) "Standard living arrangement" means a location that does not qualify as a nonstandard living arrangement.

(65) "Teen parent" means, for TANF and JOBS, a parent under the age of 20 who has not completed a high school diploma or GED.

(66) "Timely continuing benefit decision notice" means a decision notice that informs the client of the right to continued benefits and is mailed no later than the time requirements in OAR 461-175-0050.

(67) "Trust funds" mean money, securities, or similar property held by a person or institution for the benefit of another person.

(68) "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.

(69) "Variable income" means earned or unearned income that is not always received in the same amount each month.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.816, 412.006, 412.014, 412.049

Stats. Implemented: ORS 411.060, 411.070, 411.404, 411.816, 412.001, 412.006, 412.014, 412.049

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

## 461-101-0010

### Program Acronyms and Overview

(1) Acronyms are frequently used when referring to a program. There is an acronym for each umbrella program and acronyms for each subprogram.

(2) When no program acronym appears in a rule in Chapter 461 of these rules, the rule with no program acronym applies to all programs listed in this rule. If a rule does not apply to all programs, the rule uses program acronyms to identify the programs to which the rule applies.

(3) Wherever an umbrella acronym appears, that means the rule covers all the subprograms under that code.

(4) CAWEM; Citizen/Alien-Waived Emergent Medical. Medicaid coverage of emergent medical needs for clients who are not eligible for other medical programs solely because they do not meet citizenship and alien status requirements.

(5) DSNAP; Disaster Supplemental Nutrition Assistance Program. Following a presidential declaration of a major disaster in Oregon, DSNAP provides emergency DSNAP program benefits to victims. OAR 461-135-0491 to 461-135-0497 cover DSNAP eligibility and benefits.

(6) EA; Emergency Assistance. Emergency cash to families without the resources to meet emergent needs.

(7) ERDC or ERDC-BAS; Employment Related Day Care-Basic. Helps low-income working families pay the cost of child care.

(8) GA; General Assistance. Cash assistance to low-income individuals with disabilities who do not have dependent children.

(9) GAM; General Assistance Medical. Medical assistance to clients who are eligible for the GA program but have not been found eligible for OSIPM benefits.

(10) HSP; Housing Stabilization Program. A program that helps low-income families obtain stable housing. The program is operated through the Housing and Community Services Department through community-based, service-provider agencies. The Department's rules for the program (OAR 461-135-1305 to 461-135-1335) were repealed July 1, 2001.

(11) JOBS; Job Opportunity and Basic Skills. An employment program for REF, REFM, and TANF clients. JOBS helps these clients attain self-sufficiency through training and employment. The program is part of Welfare Reform.

(12) JOBS Plus. Provides subsidized jobs rather than SNAP or TANF benefits. For TANF clients, JOBS Plus is a component of the JOBS Program; for SNAP clients and noncustodial parents of children receiving TANF, it is a separate employment program. Eligibility for TANF clients, SNAP clients, and noncustodial parents of children receiving TANF is determined by the Department. Eligibility for UI recipients is determined by the Oregon State Employment Department. When used alone, JOBS Plus includes only clients whose JOBS Plus program participation is through the Department of Human Services. JOBS Plus administered through the Oregon State Employment Department is known in chapter 461 of the Oregon Administrative Rules as Oregon Employment Department UI JOBS Plus. The following acronyms are used for specific categories:

(a) TANF-PLS; Clients eligible for JOBS Plus based on TANF.

(b) SNAP-PLS; Clients eligible for JOBS Plus based on SNAP.

(c) NCP-PLS; Noncustodial parents of children receiving TANF.

(13) JPI; Job Participation Incentive. An additional \$10 food benefit to help increase the ability of parents with children, who meet federal TANF participation rate, to meet the nutritional needs of their families.

(14) LIS; Low-Income Subsidy. The Low-Income Subsidy program is a federal assistance program for Medicare clients who are eligible for extra help meeting their Medicare Part D prescription drug costs.

(15) OFSET. The Oregon Food Stamp Employment Transition Program, which helps SNAP program benefit recipients find employment. This program is mandatory for some SNAP program benefit recipients.

(16) OSIP; Oregon Supplemental Income Program. Cash supplements and special need payments to persons who are blind, disabled, or 65 years of age or older. When used alone, OSIP refers to all OSIP programs. The following acronyms are used for OSIP subprograms:

(a) OSIP-AB; Oregon Supplemental Income Program — Aid to the Blind.

(b) OSIP-AD; Oregon Supplemental Income Program — Aid to the Disabled.

(c) OSIP-EPD; Oregon Supplemental Income Program — Employed Persons with Disabilities program. This program provides Medicaid coverage for employed persons with disabilities with adjusted income less than 250 percent of the Federal Poverty Level.

(d) OSIP-OAA; Oregon Supplemental Income Program — Old Age Assistance.

(17) OSIPM; Oregon Supplemental Income Program Medical. Medical coverage for elderly and disabled individuals. When used alone, OSIPM refers to all OSIP-related medical programs. The following codes are used for OSIPM subprograms:

(a) OSIPM-AB; Oregon Supplemental Income Program Medical — Aid to the Blind.

(b) OSIPM-AD; Oregon Supplemental Income Program Medical — Aid to the Disabled.

(c) OSIPM-EPD; Oregon Supplemental Income Program Medical — Employed Persons with Disabilities program. This program provides

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Medicaid coverage for employed persons with disabilities with adjusted income less than 250 percent of the Federal Poverty Level.

(d) OSIPM-OAA; Oregon Supplemental Income Program Medical — Old Age Assistance.

(e) OSIPM-IC; Oregon Supplemental Income Program Medical — Independent Choices

(18) The Post-TANF program provides a monthly transitional payment to employed clients who are no longer eligible for the Pre-TANF or TANF programs due to earnings, and meet the other eligibility requirements.

(19) The Pre-TANF program is an up-front assessment and resource-search program for TANF applicant families. The intent of the program is to assess the individual's employment potential; determine any barriers to employment or family stability; develop an individualized case plan that promotes family stability and financial independence; help individuals find employment or other alternatives; and provide basic living expenses immediately to families in need.

(20) QMB; Qualified Medicare Beneficiaries. Programs providing payment of Medicare premiums and one program also providing additional medical coverage for Medicare recipients. Each of these programs also is considered to be a Medicare Savings Program (MSP). When used alone in a rule, QMB refers to all MSP. The following codes are used for QMB subprograms:

(a) QMB-BAS; Qualified Medicare Beneficiaries — Basic. The basic QMB program.

(b) QMB-DW; Qualified Medicare Beneficiaries — Disabled Worker. Payment of the Medicare Part A premium for people under age 65 who have lost eligibility for Social Security disability benefits because they have become substantially gainfully employed.

(c) QMB-SMB; Qualified Medicare Beneficiaries — Specified Limited Medicare Beneficiary. Payment of the Medicare Part B premium only. There are no medical benefits available through QMB-SMB.

(d) QMB-SMF; Qualified Medicare Beneficiaries — Qualified Individuals. Payment of the Medicare Part B premium only. There are no medical benefits available through QMB-SMF. This program has a 100-percent federal match, but also has an allocation that, if reached, results in the closure of the program.

(21) REF; Refugee Assistance. Cash assistance to low-income refugee singles or married couples without children.

(22) REFM; Refugee Assistance Medical. Medical coverage for low-income refugees.

(23) The Repatriate Program helps Americans resettle in the United States if they have left a foreign land because of an emergency situation.

(24) SFDNP; Senior Farm Direct Nutrition Program. Food vouchers for low income seniors. Funded by a grant from the United States Department of Agriculture.

(25) SFPSS; State Family Pre-SSI/SSDI Program. A voluntary program providing cash assistance and case management services to families when at least one TANF eligible adult in the household has an impairment (see OAR 461-125-0260) and is or will be applying for Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI).

(26) SNAP; Supplemental Nutrition Assistance Program. Helps low-income households maintain proper nutrition by giving them the means to purchase food. SNAP used to be known as FS or Food Stamps, any reference to SNAP also includes FS and Food Stamps.

(27) TA-DVS; Temporary Assistance for Domestic Violence Survivors. Addresses the needs of clients threatened by domestic violence.

(28) TANF; Temporary Assistance for Needy Families. Cash assistance for families when children in those families are deprived of parental support because of continued absence, death, incapacity, or unemployment.

Stat. Auth.: ORS 411.060, 411.404, 411.706, 411.816, 412.014, 412.049, 414.025, 414.231  
Stats. Implemented: ORS 411.060, 411.404, 411.704, 411.706, 411.816, 412.014, 412.049, 414.025, 414.231, 414.826, 414.831, 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 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 35-1992, f. 12-31-92, cert. ef. 1-1-93; AFS 16-1993, f. & cert. ef. 9-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; 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 17-1996, f. 4-29-96, cert. ef. 5-1-96; 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 9-1997, f. & cert. ef. 7-1-97; AFS 4-1998, f. 2-25-98, cert. ef. 3-1-98; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 25-1998, f. 12-18-98, 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; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 11-2001, f. 6-29-01, cert. ef. 7-1-01; 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; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 7-2003, f. & cert. ef. 4-1-03; 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 7-2005, f. & cert. ef. 7-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP

8-2006, f. & cert. ef. 6-1-06; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; 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 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 29-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; 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 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 9-2012, f. 3-29-12, cert. ef. 4-1-12; SSP 22-2013(Temp), f. & cert. ef. 8-23-13 thru 2-19-14; 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 14-2014(Temp), f. & cert. ef. 6-26-14 thru 12-23-14; SSP 16-2014, f. & cert. ef. 7-1-14; SSP 18-2014(Temp), f. & cert. ef. 7-1-14 thru 12-23-14

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## Department of Justice Chapter 137

**Rule Caption:** Amends Model Rules for soliciting public contracts, primarily Construction Manager/General Contractor and design professionals.

**Adm. Order No.:** DOJ 10-2014(Temp)

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**Rules Amended:** 137-046-0130, 137-047-0260, 137-047-0265, 137-047-0270, 137-047-0300, 137-047-0450, 137-047-0560, 137-048-0130, 137-048-0210, 137-048-0220, 137-049-0100, 137-049-0120, 137-049-0130, 137-049-0380, 137-049-0600, 137-049-0610, 137-049-0620, 137-049-0630, 137-049-0640, 137-049-0650, 137-049-0660, 137-049-0690, 137-049-0820

**Subject:** Most of the temporary rule amendments under this Statement of Need and Justification, particularly the amendments to existing rules in OAR chapter 137, division 049, are required by 2013 Oregon Laws, chapter 522 (Senate Bill 254). That enactment establishes new procedures, under ORS 279C.335, for exempting public contracts for construction manager/general contractor (CM/GC) services from traditional bidding requirements. The legislation (and these rule amendments) also regulates the contractor selection processes and contracting requirements for CM/GC projects. 2013 Oregon Laws, chapter 522 §4 directs the Attorney General to adopt rules to implement that enactment. These rules accomplish that implementation. The adoption of the rules on a temporary basis is necessary because §10 of the enactment prescribes a July 1, 2014 operative date and contracting agencies need the guidance of the rules to conduct CM/GC contracting on and after that date.

Certain temporary amendments to the design and related services consultant contracting rules (OAR chapter 137, division 048) also were made necessary by 2013 Oregon Laws, chapter 522 and its effective date. The Department of Justice took advantage of this opportunity to make refinements to consultant selection procedures that affect consultants in addition to CM/GCs.

2013 Oregon Laws chapter 66 changed the dollar amounts involved in conducting Small Procurements and Intermediate Procurements for goods and services in ORS 279B.065 and 279B.070. The amendments to OAR 137-047-260 and 137-047-0265 implement the increase in the dollars limits on Small Procurements. The immediate, temporary amendment to those rules is needed to resolve that issue.

Amendments to the construction contract retainage rule, OAR 137-049-0820, make the rule comply with 2013 Oregon Laws chapter 410. Additional rule amendments update and correct several cross-references in existing rules in OAR chapter 137, division 047.

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### 137-046-0130

#### Application of the Code and Model Rules; Exceptions

(1) Except as set forth in this section, a Contracting Agency shall exercise all procurement authority related to Public Contracting in accordance with the Code and the Model Rules.

(2) A Contracting Agency that has specifically opted out of the Model Rules and adopted its own rules of procedure for Public Contracting pursuant to 279A.065 in the exercise of its own contracting authority is not subject to these Model Rules, except for those portions of the Model Rules that the Contracting Agency has prescribed for its own use for Public Contracting and except for those portions of the Model Rules pertaining to the procurement of Construction Manager/General Contractor Services

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under ORS 279A.065(3), where the Contracting Agency is not permitted to opt out of the Model Rules.

(3) Contracts or classes of Contracts for Personal Services of a Local Contracting Agency designated as such by the Local Contracting Agency's Local Contract Review Board pursuant to ORS 279A.055, are not subject to these Model Rules, unless the Local Contracting Agency adopts OAR 137-047-0250 through 137-047-0290 as the procedures the Local Contracting Agency will use to screen and select persons to perform Contracts for Personal Services other than Architectural, Engineering and Surveying Services and Related Services.

(4) These Model Rules do not apply to the Contracts or the classes of Contracts described in ORS 279A.025(2).

(5) These Model Rules do not apply to the contracting activities of the public bodies listed in ORS 279A.025(3).

(6) Contracting Agencies otherwise subject to the Code and these Model Rules may enter into Contracts for Goods or Services with non-profit agencies providing employment opportunities for individuals with disabilities pursuant to ORS 279.835 through 279.855 without following the source selection procedures set forth in either 279A.200 through 279A.225, or 279B.050 through 279B.085. However, Contracting Agencies must enter into such Contracts in accordance with administrative rules promulgated by the Department.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.050, 279A.055, 279A.065 & 279A.180

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 10-2014(Temp), f. & cert. ef. 7-1-14 thru 12-26-14

## 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 upon 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 factors shall be reasonable estimates of actual future costs based on information available to the Contracting Agency;

(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 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 conditions 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:

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(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, OL 2011, ch 458  
Stats. Implemented: ORS 279B.060, OL 2011, ch 458  
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

## 137-047-0265

### Small Procurements

(1) Generally. For Procurements of Goods or Services less than or equal to the dollar amount stated in ORS 279B.065, a Contracting Agency may Award a Contract as a small Procurement pursuant to 279B.065.

(2) Amendments. A Contracting Agency may amend a Contract Awarded as a small Procurement in accordance with OAR 137-047-0800, but the cumulative amendments may not increase the total Contract Price to greater than one hundred twenty-five percent (125%) of the dollar amount stated in ORS 279B.065.

Stat. Auth.: ORS 279A.065 & 279B.065  
Stats. Implemented: ORS 279B.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 10-2014(Temp), f. & cert. ef. 7-1-14 thru 12-26-14

## 137-047-0270

### Intermediate Procurements

(1) Generally. For Procurements of Goods or Services greater than the dollar amount stated in ORS 279B.065 and less than or equal to the higher dollar amount stated in ORS 279B.0070, a Contracting Agency may Award a Contract as an intermediate Procurement pursuant to ORS 279B.070.

(2) Negotiations. A Contracting Agency may negotiate with a prospective Contractor who offers to provide Goods or Services in response to an intermediate Procurement to clarify its quote or Offer or to effect modifications that will make the quote or Offer more Advantageous to the Contracting Agency.

(3) Amendments. A Contracting Agency may amend a Contract Awarded as an intermediate Procurement in accordance with OAR 137-047-0800, but the cumulative amendments may not increase the total Contract Price to a sum that exceeds the higher dollar amount stated in ORS 279B.070 or one hundred twenty-five percent (125%) of the original Contract Price, whichever is greater.

Stat. Auth.: ORS 279A.065 & 279B.070  
Stats. Implemented: ORS 279B.070  
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 5-2012, f. & cert. ef. 2-27-12; DOJ 10-2014(Temp), f. & cert. ef. 7-1-14 thru 12-26-14

## 137-047-0300

### Public Notice of Solicitation Documents

(1) Notice of Solicitation Documents; Fee. A Contracting Agency shall provide public notice of every Solicitation Document in accordance with section (2) of this rule. The Contracting Agency may give additional notice using any method it determines appropriate to foster and promote competition, including:

(a) Mailing notice of the availability of the Solicitation Document to Persons that have expressed an interest in the Contracting Agency's Procurements;

(b) Placing notice on the Contracting Agency's Electronic Procurement System; or

(c) Placing notice on the Contracting Agency's Internet World Wide Web site.

(2) Advertising. A Contracting Agency shall advertise every notice of a Solicitation Document as follows:

(a) The Contracting Agency shall publish the advertisement for Offers in accordance with the requirements of ORS 279B.055(4) and 279B.060(5); or

(b) A Contracting Agency may publish the advertisement for Offers on the Contracting Agency's Electronic Procurement System instead of publishing notice in a newspaper of general circulation as required by ORS 279B.055(4)(b) if, by rule or order, the Contracting Agency's Contract Review Authority has authorized the Contracting Agency to publish notice of Solicitation Documents on the Contracting Agency's Electronic Procurement System.

(3) Content of Advertisement. All advertisements for Offers shall set forth:

(a) Where, when, how, and for how long the Solicitation Document may be obtained;

(b) A general description of the Goods or Services to be acquired;

(c) The interval between the first date of notice of the Solicitation Document given in accordance with section (2)(a) or (b) above and Closing, which shall not be less than fourteen (14) Days for an Invitation to Bid and thirty (30) Days for a Request for Proposals, unless the Contracting Agency determines that a shorter interval is in the public's interest, and that a shorter interval will not substantially affect competition. However, in no event shall the interval between the first date of notice of the Solicitation Document given in accordance with section (2)(a) or (b) above and Closing be than seven (7) Days as set forth in ORS 279B.055(4)(f). The Contracting Agency shall document the specific reasons for the shorter public notice period in the Procurement file;

(d) The date that Persons must file applications for prequalification if prequalification is a requirement and the class of Goods or Services is one for which Persons must be prequalified;

(e) The office where Contract terms, conditions and Specifications may be reviewed;

(f) The name, title and address of the individual authorized by the Contracting Agency to receive Offers;

(g) The scheduled Opening; and

(h) Any other information the Contracting Agency deems appropriate.

(4) Posting Advertisement for Offers. The Contracting Agency shall post a copy of each advertisement for Offers at the principal business office of the Contracting Agency. An Offeror may obtain a copy of the advertisement for Offers upon request.

(5) Fees. The Contracting Agency may charge a fee or require a deposit for the Solicitation Document.

(6) Notice of Addenda. The Contracting Agency shall provide potential Offerors notice of any Addenda to a Solicitation Document in accordance with OAR 137-047-0430.

Stat. Auth.: ORS 279A.065, 279B.055 & 279B.060  
Stats. Implemented: ORS 279B.055 & 279B.060  
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 10-2014(Temp), f. & cert. ef. 7-1-14 thru 12-26-14

## 137-047-0450

### Receipt, Opening, and Recording of Offers; Confidentiality of Offers.

(1) Receipt. A Contracting Agency shall electronically or mechanically time-stamp or hand-mark each Offer and any modification upon receipt. The Contracting Agency shall not open the Offer or modification upon receipt, but shall maintain it as confidential and secure until Opening. If the Contracting Agency inadvertently opens an Offer or a modification prior to the Opening, the Contracting Agency shall return the Offer or modification to its secure and confidential state until Opening. The Contracting Agency shall document the resealing for the Procurement file (e.g. "Contracting Agency inadvertently opened the Offer due to improper identification of the Offer").

(2) Opening and Recording. A Contracting Agency shall publicly open Offers including any modifications made to the Offer pursuant to OAR 137-047-0440(1). In the case of Invitations to Bid, to the extent practicable, the Contracting Agency shall read aloud the name of each Bidder, and such other information as the Contracting Agency considers appropriate. However, the Contracting Agency may withhold from disclosure information in accordance with ORS 279B.055(5)(c) and 279B.060(6). In the case of Requests for Proposals or voluminous Bids, if the Solicitation Document so provides, the Contracting Agency will not read Offers aloud.

Stat. Auth.: ORS 279A.065 & ORS 279B.055  
Stats. Implemented: ORS 279B.055  
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 10-2014(Temp), f. & cert. ef. 7-1-14 thru 12-26-14

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## 137-047-0560

### Personal Services Contract to Provide Specifications — State Agency Disqualification as Bidder or Proposer

(1) For the purposes of ORS 279B.040(1), a reasonable person would believe that a person who assisted a state contracting agency, under a personal services contract, in the development of a solicitation for goods or services (or that person's affiliate), would have an advantage in obtaining the public contract that is the subject of the solicitation if:

(a) The specifications recommended by the personal service contractor for the sequence of services, incorporation of special service or fabrication techniques, or design of any goods or components or elements of goods that the state contracting agency published in its solicitation documents call for, expressly or implicitly, requirements that only the personal services contractor (or the contractor's affiliate), or a limited class of individuals in the contractor's area of specialty, have the ability to perform or produce or have the rights to perform or produce.

(b) The rendering of solicitation document development assistance under the personal services contract gives the contractor knowledge of the state contracting agency's special needs or procedures, not generally known to the public, that give the contractor (or the contractor's affiliate) a material competitive advantage in competing for the contract for goods or services.

(c) The rendering of solicitation document development assistance under the personal services contract gives the contractor, significantly in advance of other prospective bidders or proposers, knowledge of the solicitation document requirements that would allow the personal services contractor (or the contractor's affiliate) a materially longer period in which to craft or refine a proposal in response to the solicitation documents.

(2) For the purposes of ORS 279B.040(1), a reasonable person would believe that a person who assisted a state contracting agency, under a personal services contract, in the development of a solicitation for goods or services (or that person's affiliate) would appear to have an advantage in obtaining the public contract that is the subject of the solicitation if:

(a) Taking into account the personal services contractor's announced areas of specialization, expertise or experience, the personal service contractor (or the contractor's affiliate), or only a limited class of individuals in the contractor's area of specialty, appear to have the capability to conform closely with the solicitation document requirements.

(b) Taking into account the personal services contractor's announced areas of specialization, expertise or experience, the personal service contractor (or the contractor's affiliate), or only a severely limited class of individuals in the contractor's area of specialty, appear to have the qualifications, training, experience or capacity to satisfy any minimum requirements that may be stated in the solicitation documents.

(c) The solicitation documents for a contract for goods or services contain restrictions, deadlines or requirements that do not, when viewed objectively, reasonably promote rational procurement objectives of the state contracting agency.

(3) If a state contracting agency engages a personal services contractor to advise or assist in the development of solicitation documents for a public contract for goods or services and the personal services contractor is engaged in the business of providing goods or services described in the solicitation documents, and the agency wishes to accept a bid or proposal from the personal services contractor under conditions described in section (2) or section (3) of this rule, the agency must apply to the Director of the Department of Administrative Services, as permitted by ORS 279B.040(2), for an exemption from the disqualification from the ability to submit a bid or proposal.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.040

Hist.: 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

## 137-048-0130

### Applicable Selection Procedures; Pricing Information; Disclosure of Proposals; Conflicts of Interest

(1) When selecting the most qualified Consultant to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, Contracting Agencies shall follow the applicable selection procedure under either OAR 137-048-0200 (Direct Appointment Procedure), 137-048-0210 (Informal Selection Procedure) or 137-048-0220 (Formal Selection Procedure). Contracting Agencies selecting a Consultant under this section (1) may solicit or use pricing policies and pricing proposals, or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead, to determine a Consultant's compensation only after the

Contracting Agency has selected the most qualified Consultant in accordance with the applicable selection procedure; provided, however, this restriction on a Contracting Agency's solicitation or use of pricing policies, pricing proposals or other pricing information does not apply to selection procedures used by the Contracting Agency to select a Consultant when the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services for the Project do not exceed \$100,000 or in an Emergency, pursuant to ORS 279C.0110(8) and (9). In following the Direct Appointment Procedure under OAR 137-048-0200, a Contracting Agency may base its selection of a Consultant on any information available to the Agency prior to beginning the Direct Appointment Procedure for the Project involved.

(2) Contracting Agencies selecting a Consultant to perform Related Services shall follow one of the following selection procedures:

(a) When selecting a Consultant on the basis of qualifications alone, Contracting Agencies shall follow the applicable selection procedure under OAR 137-048-0200 (Direct Appointment Procedure), 137-048-0210 (Informal Selection Procedure), or 137-048-0220 (Formal Selection Procedure);

(b) When selecting a Consultant on the basis of price competition alone, Contracting Agencies shall follow the applicable provisions under OAR 137-048-0200 (Direct Appointment Procedure), the applicable provisions of 137-048-0210 (Informal Selection Procedure) pertaining to obtaining and evaluating price proposals and other pricing information, or the applicable provisions of 137-048-0220 (Formal Selection Procedure) pertaining to obtaining and evaluating price proposals and other pricing information; and

(c) When selecting a Consultant on the basis of price and qualifications, Contracting Agencies shall follow the applicable provisions under OAR 137-048-0200 (Direct Appointment Procedure), the applicable provisions of 137-048-0210 (Informal Selection Procedure) pertaining to obtaining and evaluating price and qualifications proposals, or the applicable provisions of 137-048-0220 (Formal Selection Procedure) pertaining to obtaining and evaluating price and qualifications proposals. For selections under the Informal Selection Procedure of OAR 137-048-0210, Contracting Agencies may use abbreviated Requests for Proposals that nevertheless meet the requirements of 137-048-0210, when the Contracting Agency determines, in its sole discretion, that the characteristics of the Project and the Related Services required by the Contracting Agency would be adequately addressed by a more abbreviated Request for Proposals document, generally comparable to the Intermediate Procurement procedures and related documentation under ORS 279B.070 and OAR 137-047-0270. Contracting Agencies subject to this section (2) may request and consider a Proposer's pricing policies and pricing proposals or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead, submitted with a proposal.

(3) A Contracting Agency is not required to follow the procedures in Section (1) or Section (2) of this rule, when the Contracting Agency has established Price Agreements with more than one Consultant and is selecting a single Consultant to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services under an individual work order or task order. Provided, however, the criteria and procedures the Contracting Agency uses to select a single Consultant, when the Contracting Agency has established Price Agreements with more than one Consultant, must meet the requirements of OAR 137-048-0270 (Price Agreements).

(4) Contracting Agencies may use electronic methods to screen and select a Consultant in accordance with the procedures described in sections (1) and (2) of this rule. If a Contracting Agency uses electronic methods to screen and select a Consultant, the Contracting Agency shall first promulgate rules for conducting the screening and selection procedure by electronic means, substantially in conformance with OAR 137-047-0330 (Electronic Procurement).

(5) For purposes of these division 48 rules, a "mixed" Contract is one requiring the Consultant to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, and also provide Related Services, other Services or other related Goods under the Contract. A Contracting Agency's classification of a procurement that will involve a "mixed" Contract will be determined by the predominant purpose of the Contract. A Contracting Agency will determine the predominant purpose of the Contract by determining which of the Services involves the majority of the total Estimated Fee to be paid under the Contract. If the majority of the total Estimated Fee to be paid under the Contract is for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, the Contracting

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Agency shall comply with the requirements of ORS 279C.110 and section (1) of this rule. If majority of the total Estimated Fee to be paid under the Contract is for Related Services, the Contracting Agency shall comply with the requirements of ORS 279C.120 and section (2) of this rule. If the majority of the total Estimated Fee to be paid under the Contract is for some other Services or Goods under the Public Contracting Code, the Contracting Agency shall comply with the applicable provisions of the Public Contracting Code and divisions 46, 47 and 49 of the Model Rules that match the predominant purpose of the Contract.

(6) In applying these rules, State Contracting Agencies shall support the state's goal of promoting a sustainable economy in the rural areas of the state.

(7) Consistent with the requirements of ORS 279C.107 and the remaining requirements of ORS 279C.100, 279C.105 and 279C.110 through 279C.125, the following provisions apply to proposals received by a Contracting Agency for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services:

(a) The term "competitive proposal," for purposes of ORS 279C.107, includes proposals under OAR 137-048-0200 (Direct Appointment Procedure), 137-048-0210 (Informal Selection Procedure), 137-048-0220 (Formal Selection Procedure) or 137-048-0130(2)(c) (selection based on price and qualifications) and any proposals submitted in response to a selection process for a work order or task order under 137-048-0270 (Price Agreements).

(b) For purposes of proposals received by a Contracting Agency under OAR 137-048-0200 (Direct Appointment Procedure), a formal notice of intent to award is not required. As a result, while a Contracting Agency may make proposals under 137-048-0200 (Direct Appointment Procedure) open for public inspection following the Contracting Agency's decision to begin Contract negotiations with the selected Consultant, 137-048-0200 proposals are not required to be open for public inspection until after the Contracting Agency has executed a Contract with the selected Consultant.

(c) In the limited circumstances permitted by ORS 279C.110, 279C.115 and 279C.120, where the Contracting Agency is conducting discussions or negotiations with proposers who submit proposals that the Contracting Agency has determined to be closely competitive or to have a reasonable chance of being selected for award, the Contracting Agency may open proposals so as to avoid disclosure of proposal contents to competing Proposers, consistent with the requirements of ORS 279C.107. Otherwise, Contracting Agencies may open proposals in such a way as to avoid disclosure of the contents until after the Contracting Agency executes a Contract with the selected Consultant. If the Contracting Agency determines that it is in the best interest of the Contracting Agency to do so, the Contracting Agencies may make proposals available for public inspection following the Contracting Agency's issuance of a notice of intent to award a Contract to a Consultant; and

(d) Disclosure of proposals and proposal information is otherwise governed by ORS 279C.107.

(8) As required by ORS 279C.307, pertaining to requirements to ensure the objectivity and independence of providers of certain Personal Services which are procured under ORS chapter 279C, Contracting Agencies may not:

(a) Procure the Personal Services identified in ORS 279C.307 from a Contractor or an affiliate of a Contractor who is a party to the Public Contract that is subject to administration, management, monitoring, inspection, evaluation or oversight by means of the Personal Services; or

(b) Procure the Personal Services identified in ORS 279C.307 through the Public Contract that is subject to administration, management, monitoring, inspection, evaluation or oversight by means of the Personal Services.

(9) The requirements of ORS 279C.307 and section (8) of this rule apply in the following circumstances, except as provided in section (10) of this rule:

(a) A Contracting Agency requires the Procurement of Personal Services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing a Public Contract or performance under a Public Contract that is subject to ORS Chapter 279C. A Public Contract that is "subject to ORS chapter 279C" includes a Public Contract for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, a Public Contract for Related Services or a Public Contract for construction services under ORS Chapter 279C.

(b) The Procurements of Personal Services subject to the restrictions of ORS 279C.307 include, but are not limited to, the following:

(A) Procurements for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, which involve overseeing or monitoring the performance of a construction Contractor under a Public Contract for construction services subject to ORS chapter 279C;

(B) Procurements for commissioning services, which involve monitoring, inspecting, evaluating or otherwise overseeing the performance of a Contractor providing Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or the performance of a construction Contractor under a Public Contract for construction services subject to ORS chapter 279C;

(C) Procurements for project management services, which involve administration, management, monitoring, inspecting, evaluating compliance with or otherwise overseeing the performance of a Contractor providing Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, construction services subject to ORS chapter 279C, commissioning services or other Related Services for a Project;

(D) Procurements for special inspections and testing services, which involve inspecting, testing or otherwise overseeing the performance of a construction Contractor under a Public Contract for construction services subject to ORS Chapter 279C; and

(E) Procurements for other Related Services or Personal Services, which involve administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing the Public Contracts described in Section (9)(a) of this rule.

(10) The restrictions of ORS 279C.307 do not apply in the following circumstances, except as further specified below:

(a) To a Contracting Agency's Procurement of both design services and construction services through a single "Design-Build" Procurement, as that term is defined in OAR 137-049-0610. Such a Design-Build Procurement includes a Procurement under an Energy Savings Performance Contract, as defined in ORS 279A.010. Provided, however, the restrictions of ORS 279C.307 do apply to a Contracting Agency's Procurement of Personal Services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing a Design-Build Contract or performance under such a Contract resulting from a Design-Build Procurement; and

(b) To a Contracting Agency's Procurement of both pre-construction services and construction services through a single Procurement of Construction Manager/General Contractor Services, as that term is defined in ORS 279C.332(3). Provided, however, the restrictions of ORS 279C.307 do apply to a Contracting Agency's Procurement of Personal Services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing a Construction Manager/General Contractor Services Contract or performance under such a Contract resulting from a Procurement of Construction Manager/General Contractor Services.

Stat. Auth.: ORS 279A.065, OL 2011, ch 458

Stats. Implemented: ORS 279A.065, 279C.100-279C.125, OL 2009, ch. 880, sec. 11, OL 2011, ch 458

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

## 137-048-0210

### Informal Selection Procedure

(1) Contracting Agencies may use the informal selection procedure described in this rule to obtain a Contract if the Estimated Fee is expected not to exceed \$250,000.

(2) Contracting Agencies using the informal selection procedure on the basis of qualifications alone or, for Related Services, on the basis of price and qualifications shall:

(a) Create a Request for Proposals that includes at a minimum the following:

(A) A description of the Project for which a Consultant's Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services are needed and a description of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services that will be required under the resulting Contract;

(B) The anticipated Contract performance schedule;

(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 construction services;

# ADMINISTRATIVE RULES

(D) The date and time proposals are due and other directions for submitting proposals;

(E) Criteria upon which the most qualified Consultant will be selected. Selection criteria may include, but are not limited to, the following:

(i) The amount and type of resources and number of experienced staff the Consultant has committed to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the Request for Proposals within the applicable time limits, including the current and projected workloads of such staff and the proportion of time such staff would have available for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services;

(ii) Proposed management techniques for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the Request for Proposals;

(iii) A Consultant's capability, experience and past performance history and record in providing similar Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services, including but not limited to quality of work, ability to meet schedules, cost control methods and Contract administration practices;

(iv) A Consultant's approach to Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the Request for Proposals and design philosophy, if applicable;

(v) A Consultant's geographic proximity to and familiarity with the physical location of the Project;

(vi) Volume of work, if any, previously awarded to a Consultant, with the objective of effecting equitable distribution of Contracts among qualified Consultants, provided such distribution does not violate the principle of selecting the most qualified Consultant for the type of professional services required;

(vii) A Consultant's ownership status and employment practices regarding women, minorities and emerging small businesses or historically underutilized businesses;

(viii) 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.

(F) 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; and

(G) A statement directing Proposers to the protest procedures set forth in these Division 48 rules.

(b) Provide a Request for Proposals to a minimum of five (5) prospective Consultants drawn from:

(A) The Contracting Agency's list of Consultants that is created and maintained under OAR 137-048-0120 (List of Interested Consultants; Performance Record);

(B) Another Contracting Agency's list of Consultants that is created and maintained under OAR 137-048-0120 (List of Interested Consultants; Performance Record); or

(C) All Consultants that the Contracting Agency reasonably can locate that offer the desired Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services, or any combination of the foregoing.

(c) Review and rank all proposals received according to the criteria set forth in the Request for Proposals, and select the three highest ranked Proposers.

(3) Contracting Agencies using the informal selection procedure for Related Services on the basis of price proposals and other pricing information only shall:

(a) Create a Request for Proposals that includes at a minimum the following:

(A) A description of the Project for which a Consultant's Related Services are needed and a description of the Related Services that will be required under the resulting Contract;

(B) The anticipated Contract performance schedule;

(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 construction services;

(D) The date and time proposals are due and other directions for submitting proposals;

(E) 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 (2)(a)(E)(i) through section (2)(a)(E)(vii) of this rule that are related to the Related Services described in the Request for Proposals;

(F) Pricing criteria upon which the highest ranked Consultant will be selected. Pricing criteria may include, but are not limited to, the total price for the Related Services described in the Request for Proposals, 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 Request for Proposals, expenses, hourly rates and overhead; and

(G) A statement directing Proposers to the protest procedures set forth in these Division 48 rules.

(b) Provide the Request for Proposals to a minimum of five (5) prospective Consultants drawn from:

(A) The Contracting Agency's list of Consultants that is created and maintained under OAR 137-048-0120 (List of Interested Consultants; Performance Record);

(B) Another Contracting Agency's list of Consultants that is created and maintained under OAR 137-048-0120 (List of Interested Consultants; Performance Record); or

(C) All Consultants that the Contracting Agency reasonably can locate that offer the desired Related Services; and.

(c) Review and rank all responsive proposals received, according to the total price for the Related Services described in the Request for Proposals, Consultant pricing policies and other pricing information requested in the Request for Proposals, including but not limited to the number of hours proposed for the Related Services required, expenses, hourly rates and overhead, and select the three highest-ranked Proposers who submitted price proposals that will provide the best value to the Contracting Agency.

(4) If the Contracting Agency does not cancel the RFP after it reviews the proposals and ranks each Proposer, the Contracting Agency will begin negotiating a Contract with the highest ranked Proposer. The Contracting Agency shall direct Contract negotiations toward obtaining written agreement on the following:

(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.

(5) The Contracting Agency shall, either orally or in writing, formally terminate negotiations with the highest ranked Proposer, if the Contracting Agency and the 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, in accordance with section (4) of this rule, until negotiations result in a Contract within a reasonable amount of time, the Contracting Agency may end the particular informal solicitation and thereafter may proceed with a new informal solicitation under this rule or proceed with a formal solicitation under OAR 137-048-0220 (Formal Selection Procedure).

(6) The Contracting Agency shall terminate the informal selection procedure and proceed with the formal selection procedure under OAR 137-048-0220 if the scope of the anticipated Contract is revised during negotiations so that the Estimated Fee will exceed \$250,000.

Stat. Auth.: ORS 279A.065, OL 2011, ch 458

Stats. Implemented: ORS 279C.110, OL 2011, ch 458

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 10-2014(Temp), f. & cert. ef. 7-1-14 thru 12-26-14

## 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

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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 Requests for Proposals, or Requests for Qualifications followed by Requests for Proposals.

(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 the minority, women and emerging small business enterprise 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, photogrammetry, 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

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(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 Requests 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 Request for Proposals, 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 proposal are due, and the delivery location for proposal;

(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 proposal and reservation of the right to cancel the RFP at anytime 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 disadvantaged business enterprise ("DBE"), minority business enterprise ("MBE"), women business enterprise ("WBE") and emerging small business enterprise ("ESB") participation goals or good faith efforts with respect to DBE, MBE, WBE and ESB 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 Request for Proposals, 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 Request for Proposals, 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 Request for Proposals, 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 Request for Proposals.

(c) RFP Evaluation Committee. The Contracting Agency shall establish a committee of at least three individuals to review, score and rank pro-

# ADMINISTRATIVE RULES

posal 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, OL 2011, ch 458  
Stats. Implemented: ORS 279C.110, 279C.527, OL 2011, ch 458  
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

## 137-049-0100

### Application

(1) These division 49 rules apply to Public Improvement Contracts as well as Public Contracts for ordinary construction Services that are not Public Improvements. Model Rules that apply specifically to Public Improvement Contracts are so identified. These division 49 rules apply to Contracts for Construction Manager/General Contractor Services, whether the initial Contract between the parties includes both preconstruction services and construction services, or only contains pre-construction services, since the underlying procurement for Construction Manager/General Contractor Services authorizes Contracting Agencies to enter into Contracts for both pre-construction and construction services.

(2) These division 49 rules address matters covered in ORS Chapter 279C (with the exception of Architectural, Engineering, Land Surveying

and Related Services, all of which are addressed in division 48 of the Model Rules).

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 10-2014(Temp), f. & cert. ef. 7-1-14 thru 12-26-14

## 137-049-0120

### Definitions

(1) "Conduct Disqualification" means a Disqualification pursuant to 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. Disqualification may be a Conduct Disqualification or DBE Disqualification.

(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  
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

## 137-049-0130

### Competitive Bidding Requirement

A Contracting Agency shall solicit Bids for Public Improvement Contracts by Invitation to Bid ("ITB"), except as otherwise allowed or required pursuant to ORS 279C.335 on competitive bidding exceptions and exemptions, 279A.030 on federal law overrides or 279A.100 on affirmative action. Also see OAR 137-049-0600 to 137-049-0690 regarding the use of Alternative Contracting Methods, use of Alternative Contracting Methods for projects which are excepted or exempt from the competitive bidding process, use of Alternative Contracting Methods within the competitive bidding process and the process for obtaining an exemption from competitive bidding requirements.

Stat. Auth.: ORS 279A.065  
Stats. Implemented: ORS 279C.335  
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

## 137-049-0380

### Bid or Proposal Evaluation Criteria

(1) **General.** A Public Improvement Contract, if Awarded, must be Awarded to the Responsible Bidder submitting the lowest Responsive Bid, or to the Responsible Proposer submitting the best Responsive Proposal. (See OAR 137-049-0390, and Rules for Alternative Contracting Methods at 137-049-0600 to 137-049-0690.)

(2) **Bid Evaluation Criteria.** Invitations to Bid may solicit lump-sum Offers, unit-price Offers or a combination of the two.

(a) **Lump Sum.** If the ITB requires a lump-sum Bid, without additive or deductive alternates, or if the Contracting Agency elects not to award additive or deductive alternates, Bids must be compared on the basis of lump-sum prices, or lump-sum base Bid prices, as applicable. If the ITB calls for a lump-sum base Bid, plus additive or deductive alternates, the total Bid price must be calculated by adding to or deducting from the base Bid those alternates selected by the Contracting Agency, for the purpose of comparing Bids.

(b) **Unit Price.** If the Bid includes unit pricing for estimated quantities, the total Bid price must be calculated by multiplying the estimated quantities by the unit prices submitted by the Bidder, and adjusting for any additive or deductive alternates selected by the Contracting Agency, for the purpose of comparing Bids. Contracting Agencies shall specify within the Solicitation Document the estimated quantity of the procurement to be used for determination of the low Bidder. In the event of mathematical discrepancies between unit price and any extended price calculations submitted by the Bidder, the unit price governs. (See OAR 137-049-0350(2)(b).)

(3) **Proposal Evaluation Criteria.** If the Contracting Agency's Contract Review Authority has exempted the Procurement of a Public Improvement from the competitive bidding requirements of ORS 279C.335(1), and has directed the Contracting Agency to use an Alternative Contracting Method under 279C.335(4), the Contracting Agency shall set forth the evaluation criteria in the Solicitation Documents. (See OAR 137-

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049-0640, 137-049-0650, 137-049-0670, 137-049-0690, ORS 279C.335 and 279C.405.)

Stat. Auth.: ORS 279A.065, OL 2011, ch 458  
Stats. Implemented: ORS 279C.335, OL 2011, ch 458  
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 10-2011, f. 11-29-11, cert. ef. 1-1-12; DOJ 10-2014(Temp), f. & cert. ef. 7-1-14 thru 12-26-14

## 137-049-0600

### Purpose

OAR 137-049-0600 to 137-049-0690 are intended to provide guidance to Contracting Agencies regarding the use of Alternative Contracting Methods for Public Improvement Contracts, as may be directed by a Contracting Agency's Contract Review Authority under ORS 279C.335. These Alternative Contracting Methods include, but are not limited to the following forms of contracting: Design-Build, Energy Savings Performance Contract and the Construction Manager/General Contractor Method. To the extent any such Alternative Contracting Methods are utilized within the competitive bidding process set forth in 279C.335(1), these OAR 137-049-0600 to 137-049-0690 rules are advisory only and may be used or referred to by a Contracting Agency in whole, in part or not at all, within the discretion of the Contracting Agency. As to ESPC contracting, these 137-049-0600 to 137-049-0690 rules implement the requirements of ORS 279C.335 pertaining to the adoption of Model Rules appropriate for use by all Contracting Agencies to govern the procedures for entering into ESPCs. As to contracting for Construction Manager General Contractor Services, OAR 137-049-0600 to 137-049-0690 include mandatory and optional provisions pertaining to the procurement of Construction Manager/General Contractor Services, pursuant to the requirements of ORS 279C.337.

Stat. Auth.: ORS 279C.335, 279A.065 & 351.086  
Stats. Implemented: ORS 279C.335, 279C.337, 279A.065 & 351.086  
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 10-2014(Temp), f. & cert. ef. 7-1-14 thru 12-26-14

## 137-049-0610

### Definitions for Alternative Contracting Methods

The following definitions shall apply to these OAR 137-049-0600 to 137-049-0690 rules, unless the context requires otherwise:

(1) **Affiliate** has the meaning set forth in ORS 279C.332(1).

(2) **Alternative Contracting Methods** means innovative techniques for procuring or performing Public Improvement Contracts, utilizing processes other than the traditional methods involved in the design-build construction contracting method (with Award of a Public Improvement Contract based solely on price, in which a final design is issued with formal Bid documents, construction Work is obtained by sealed Bid Awarded to the Responsible Bidder submitting the lowest Responsive Bid, and the project is built in accordance with those documents). In industry practice, such methods commonly include variations of Design-Build contracting, CM/GC forms of contracting and ESPCs, which are specifically addressed in these OAR 137-049-0600 to 137-049-0690 rules. These methods also include other developing techniques, which include but are not limited to general "performance contracting," "cost plus time" contracting (as more particularly described in ORS 279C.332(3)(b)(D)(iii)(I)) and "qualifications plus project approach" contracting (as more particularly described in 279C.332(3)(b)(D)(iii)(II)). Procedural requirements for these methods are identified in these OAR 137-049-0600 to 137-049-0690 rules, when a Contracting Agency uses an Alternative Contracting Method in a procurement that requires an exemption from competitive bidding under ORS 279C.335(2) or in an ESPC procurement that is excepted from competitive bidding under ORS 279.335(1).

(3) **Construction Manager/General Contractor (or "CM/GC")** has the meaning set forth in ORS 279C.332(2).

(4) **Construction Manager/General Contractor Method (or "CM/GC Method")** means the Alternative Contracting Method which involves a Contracting Agency's selection of a CM/GC to perform CM/GC Services for a project or projects.

(5) **Construction Manager/General Contractor Services (or "CM/GC Services")** has the meaning set forth in ORS 279C.332(3).

(6) **Design-Build** means a form of Procurement that results in a Public Improvement Contract in which the construction Contractor also provides or obtains specified design services, participates on the project team with the Contracting Agency, and manages both design and construction. In this form of Contract, a single Person provides the Contracting Agency with all of the Personal Services and construction Work necessary to both design and construct the project.

(7) **Early Work** means construction services, construction materials and other Work authorized by the parties to be performed under the CM/GC

Contract in advance of the establishment of the GMP, fixed price or other maximum, not-to-exceed price for the project. Permissible Early Work shall be limited to early procurement of materials and supplies, early release of bid or proposal packages for site development and related activities, and any other advance Work related to important components of the project for which performance prior to establishment of the GMP will materially and positively affect the development or completion of the project.

(8) **Energy Conservation Measures (or "ECMs") (also known as "energy efficiency measures")** means, as used in ESPC Procurement, any equipment, fixture or furnishing to be added to or used in an existing building or structure, and any repair, alteration or improvement to an existing building or structure that is designed to reduce energy consumption and related costs, including those costs related to electrical energy, thermal energy, water consumption, waste disposal, and future contract-labor costs and materials costs associated with maintenance of the building or structure. For purposes of these OAR 137-049-0600 to 137-049-0690 rules, use of either or both of the terms "building" or "structure" shall be deemed to include existing energy, water and waste disposal systems connected or related to or otherwise used for the building or structure when such system(s) are included in the project, either as part of the project together with the building or structure, or when such system(s) are the focus of the project. Maintenance services are not Energy Conservation Measures, for purposes of these 137-049-0600 to 137-049-0690 rules.

(9) **Energy Savings Guarantee** means the energy savings and performance guarantee provided by the ESCO under an ESPC Procurement, which guarantees to the Contracting Agency that certain energy savings and performance will be achieved for the project covered by the RFP, through the installation and implementation of the agreed-upon ECMs for the project. The Energy Savings Guarantee shall include, but shall not be limited to, the specific energy savings and performance levels and amounts that will be guaranteed, provisions related to the financial remedies available to the Contracting Agency in the event the guaranteed savings and performance are not achieved, the specific conditions under which the ESCO will guarantee energy savings and performance (including the specific responsibilities of the Contracting Agency after final completion of the design and construction phase), and the term of the energy savings and performance guarantee.

(10) **Energy Savings Performance Contract (or "ESPC")** means a Public Improvement Contract between a Contracting 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.

(11) **General Conditions Work (or "GC Work")** means a general grouping of project Work required to support construction operations on the project that is not separately invoiced or subcontracted by the Contractor or included within the Contractor's overhead or fee.

(12) **Guaranteed Maximum Price (or "GMP")** has the meaning set forth in ORS 279C.332(4), pertaining to procurements for CM/GC Services. For Alternative Contracting Methods other than the CM/GC Method, "Guaranteed Maximum Price" or "GMP" means the total maximum price provided to the Contracting Agency by the Contractor and accepted by the Contracting Agency that includes all reimbursable costs and fees for completion of the Contract Work and any particularly identified contingency amounts, as defined by the Public Improvement Contract.

(13) **Measurement and Verification (or "M & V")** means, as used in ESPC Procurement, the examination of installed ECMs using the International Performance Measurement and Verification Protocol ("IPMVP"), or any other comparable protocol or process, to monitor and verify the operation of energy-using systems pre-installation and post-installation.

(14) **Project Development Plan** means a secondary phase of Personal Services and Work performed by an ESCO in an ESPC Procurement when the ESCO performs more extensive design of the agreed-upon ECMs for the project, provides the detailed provisions of the ESCO's Energy Savings Guarantee that the fully installed and commissioned ECMs will achieve a particular energy savings level for the building or structure, and prepares an overall report or plan summarizing the ESCO's Work during this secondary phase of the Work and otherwise explaining how the agreed-upon ECMs will be implemented during the design and construction phase of the Work; The term "Project Development Plan" can also refer to the report or plan provided by the ESCO at the conclusion of this phase of the Work.

(15) **Qualified Energy Service Company (or "ESCO")** means, as used in ESPC Procurement, a company, firm or other legal Person with the

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following characteristics: demonstrated technical, operational, financial and managerial capabilities to design, install, construct, commission, manage, measure and verify, and otherwise implement Energy Conservation Measures and other Work on building systems or building components that are directly related to the ECMs in existing buildings and structures; a prior record of successfully performing ESPCs on projects involving existing buildings and structures that are comparable to the project under consideration by the Contracting Agency; and the financial strength to effectively guarantee energy savings and performance under the ESPC for the project in question, or the ability to secure necessary financial measures to effectively guarantee energy savings under an ESPC for that project.

(16) **Savings** has the meaning set forth in ORS 279C.337(4), pertaining to CM/GC Services procurements. For other Alternative Contracting Methods, “Savings” means a positive difference between a Guaranteed Maximum Price or other maximum not-to-exceed price set forth in a Public Improvement Contract and the actual cost of the Contractor’s performance of the Contract Work payable by the Contracting Agency under the terms of the Contract, including costs for which a Contracting Agency reimburses a Contractor and fees, profits or other payments the Contractor earns.

(17) **Technical Energy Audit** means, as used in ESPC Procurement, the initial phase of Personal Services to be performed by an ESCO that includes a detailed evaluation of an existing building or structure, an evaluation of the potential ECMs that could be effectively utilized at the facility, and preparation of a report to the Contracting Agency of the ESCO’s Findings during this initial phase of the Work; the term “Technical Energy Audit” can also refer to the report provided by the ESCO at the conclusion of this phase of the Work.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.332, 279C.335 & 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 10-2014(Temp), f. & cert. ef. 7-1-14 thru 12-26-14

## 137-049-0620

### Use of Alternative Contracting Methods

(1) **Competitive Bidding Exemptions.** ORS Chapter 279C requires a competitive bidding process for Public Improvement Contracts, unless a statutory exception applies, a class of Contracts has been exempted from the competitive bidding process, or an individual Contract has been exempted from the competitive bidding process, in accordance with ORS 279C.335 and any applicable Contracting Agency administrative rules. Use of Alternative Contracting Methods may be directed by the Contracting Agency if that use is within the competitive bidding process, if feasible, or through an available statutory exception to the competitive bidding process. Use of Alternative Contracting Methods must be directed through a Contracting Agency’s Contract Review Authority, however, when use of the Alternative Contracting Method requires an exemption to the prescribed competitive bidding requirement of 279C.335. In any of these circumstances, use of Alternative Contracting Methods must be justified in accordance with any applicable Code and Contracting Agency requirements and, if required, these OAR 137-049-0600 to 137-049-0690 rules. See 137-049-0630 regarding required Findings and restrictions on exemptions from the competitive bidding requirement under ORS 279C.335.

(2) **Energy Savings Performance Contracts.** ESPCs are exempted from the competitive bidding requirements for Public Improvement Contracts pursuant to ORS 279C.335(1)(f), if the Contracting Agency complies with the procedures set forth in OAR 137-049-0600 to 137-049-0690 or parallel administrative rules meeting the requirements of ORS 279A.065 related to the solicitation, negotiation and contracting for ESPC Work. If those procedures are not followed, an ESPC procurement may still be exempted from competitive bidding requirements by following the general exemption procedures within ORS 279C.335.

(3) **Post-Project Evaluation.** ORS 279C.355 requires that the Contracting Agency prepare a formal post-project evaluation of Public Improvement projects in excess of \$100,000 when the Contracting Agency does not use the competitive bidding process required by ORS 279C.335. The purpose of this evaluation is to determine whether it was actually in the Contracting Agency’s best interest to use an Alternative Contracting Method outside the competitive bidding process. The evaluation must be delivered to the Contracting Agency’s Contract Review Authority within 30 Days of the date the Contracting Agency “accepts” the Public Improvement project, which event is typically defined in the Contract. In the absence of such definition, acceptance of the Project occurs on the later of the date of final payment or the date of final completion of the Contract Work. ORS 279C.355 describes the timing and content of this evaluation, with three required elements:

(a) Financial information, consisting of cost estimates, any Guaranteed Maximum Price, changes and actual costs;

(b) A narrative description of successes and failures during design, engineering and construction; and

(c) An objective assessment of the use of the Alternative Contracting Method as compared to the exemption Findings.

Stat. Auth.: ORS 279C.335 & 279A.065

Stats. Implemented: ORS 279C.335, 279A.065, 279C.355 & 351.086

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 10-2014(Temp), f. & cert. ef. 7-1-14 thru 12-26-14

## 137-049-0630

### Findings, Notice and Hearing

(1) **Cost Savings and Other Substantial Benefits Factors.** When Findings are required under ORS 279C.335 to exempt a Contract or class of Contracts from the competitive bidding requirements, the “substantial cost savings and other substantial benefits” criteria at 279C.335(2)(b) require consideration of the type, cost and, to the extent applicable, the other factors set forth in the statute. If a particular factor has no application whatsoever to the particular Public Improvement Contract or class of Public Improvement Contracts, the Director of the Oregon Department of Administrative Services, the Director of Transportation or the local contract review board does not need to consider that factor, and the Contracting Agency is not required to address the factor, other than to explain why the factor has no application whatsoever to the particular Public Improvement Contract or class of Public Improvement Contracts..

(2) **Required Information.** The statutory definition of “Findings” at ORS 279C.330 which applies to exemptions from competitive bidding means the justification for a Contracting Agency or State Agency conclusion regarding the factors listed in both ORS 279C.335(2)(a) and 279C.335(2)(b) or, in the alternative, both 279C.335(2)(a) and 279C.335(2)(c).

(3) **Addressing Cost Savings.** Accordingly, when the Contract or class of Contracts under consideration for an exemption contemplates the use of Alternative Contracting Methods, the “substantial cost savings and other substantial benefits” requirement may be addressed by a combination of:

(a) Specified Findings that address the factors and other information specifically identified by statute, including, but not limited to, an analysis or reasonable forecast of present and future cost savings and other substantial benefits; and

(b) Additional Findings that address industry practices, surveys, trends, past experiences, evaluations of completed projects required by ORS 279C.355 and related information regarding the expected benefits and drawbacks of particular Alternative Contracting Methods. To the extent practicable, such Findings shall relate back to the specific characteristics of the project or projects at issue in the exemption request.

(c) As an alternative to the “substantial cost savings and other substantial benefits” requirement in ORS 279C.335(2)(b), if an Alternative Contracting Method has not been previously used, the Contracting Agency or State Agency may make a Finding that identifies the project as a “pilot project” under ORS 279C.335(2)(c). Nevertheless, the Contracting Agency or State Agency must still make the findings required in ORS 279C.335(2)(a).

(4) **Favoritism and Competition.** The criteria at ORS 279C.335(2)(a) that the exemption “is unlikely to encourage favoritism” or “substantially diminish competition” may be addressed in contemplating the use of Alternative Contracting Methods by specifying the manner in which an RFP process will be utilized, that the Procurement will be formally advertised with public notice and disclosure of the planned Alternative Contracting Method, competition will be encouraged, Award made based upon identified selection criteria and an opportunity to protest that Award.

(5) **Descriptions.** Findings supporting a competitive bidding exemption must describe with specificity any Alternative Contracting Method to be used in lieu of competitive bidding, including, but not limited to, whether a one-step (Request for Proposals), two-step (beginning with a Request for Qualifications, followed by a Request for Proposals) or other solicitation process will be utilized. The Findings may also describe anticipated characteristics or features of the resulting Public Improvement Contract. However, the purpose of an exemption from competitive bidding is limited to a determination of the Procurement method. Any unnecessary or incidental descriptions of the specific details of the anticipated Contract within the supporting Findings are not binding upon the Contracting Agency. The parameters of the Public Improvement Contract are those

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characteristics or specifics that are announced in the Solicitation Document.

(6) **Class Exemptions.** In making the findings supporting a class exemption the Contracting Agency shall clearly identify the “class” with respect to its defining characteristics, pursuant to the requirements of ORS 279C.335(3). The class must meet the following requirements:

(a) The class cannot be based on a single characteristic or factor, so that an Agency directly or indirectly creates a class whereby the Agency uses, for example, the CM/GC Method for all Agency construction projects or all Agency construction projects over a particular dollar amount, unidentified future Agency construction projects of a particular work category, or all Agency construction projects from a particular funding source such as the sale of bonds; and

(b) The class must include a combination of factors, be defined by the Agency through characteristics that reasonably relate to the exemption criteria set forth in ORS 279C.335(2) and must reflect a detailed evaluation of those characteristics so that the class is defined in a limited way that effectively meets the Agency’s objectives while allowing for impartial and open competition, and protecting the integrity of the exemption process. An example of a class that might be permitted under the statute is a series of projects, such as a specific group of building renovation projects, that

(A) Involve renovations for a common purpose;

(B) Require completion on a related schedule in order to avoid unnecessary disruption of Contracting Agency operations;

(C) Share common characteristics, such as historic building considerations, the presence of asbestos or other hazardous substances, or the presence of agency staff during construction;

(D) Otherwise possess characteristics that meet the requirements of ORS 279C.335(2); and

(E) Otherwise meet the requirements of the Director of the Oregon Department of Administrative Services, the Director of Transportation or the local contract review board, as applicable.

(7) **Public Hearing.** Before final adoption of Findings exempting a Public Improvement Contract or class of Contracts from the requirement of competitive bidding, a Contracting Agency or State Agency shall give notice and hold a public hearing as required by ORS 279C.335(5). The hearing shall be for the purpose of receiving public comment on the Contracting Agency or State Agency’s draft Findings.

(8) **Prior Review of Draft Findings.** State Contracting Agencies shall submit draft Findings to their Contract Review Authority for review and concurrence prior to advertising the public hearing required by ORS 279C.335(5). State Contracting Agencies shall also submit draft Findings to the Department of Justice for review and comment prior to advertising the public hearing.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.335 & 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 10-2014(Temp), f. & cert. ef. 7-1-14 thru 12-26-14

## 137-049-0640

### Competitive Proposals; Procedure

Contracting Agencies may utilize the following RFP process for Public Improvement Contracts, allowing flexibility in both Proposal evaluation and Contract negotiation, only in accordance with ORS 279C.330 to 279C.337, ORS 279C.400 to 279C.410 and OAR 137-049-0600 to 137-049-0690, unless other applicable statutes control a Contracting Agency’s use of competitive Proposals for Public Improvement Contracts. Also see the subdivision of rules in this division 49 entitled “Formal Procurement Rules,” 137-049-0200 to 137-049-0480, and RFP related rules under the Alternative Contracting Methods subdivision at 137-049-0640 to 137-049-0660. For ESPCs, the following RFP process as further specified in OAR 137-049-0645, 137-049-0650, 137-049-0660 and 137-049-0680 shall be utilized, if a Contracting Agency desires the Procurement process to be exempt from the competitive bidding requirements of ORS 279C.335. The RFP process for the Alternative Contracting Methods identified in OAR 137-049-0600 to 137-049-0690 includes the following steps:

(1) **Proposal Evaluation.** Factors in addition to price may be considered in the selection process, but only as set forth in the RFP. Proposal evaluation shall be as objective as possible. Evaluation factors need not be precise predictors of future costs and performance, but to the extent possible such evaluation factors shall:

(a) Be reasonable estimates based on information available to the Contracting Agency;

(b) Treat all Proposals equitably; and

(c) Recognize that public policy requires that Public Improvements be constructed at the least overall cost to the Contracting Agency. See ORS

279C.305. For ESPC Proposal evaluations, the Contracting Agency may provide in the RFP that qualifications-based evaluation factors will outweigh the Contracting Agency’s consideration of price-related factors, due to the fact that prices for the major components of the Work to be performed during the ESPC process contemplated by the RFP will likely not be determinable at the time of Proposal evaluation. For CM/GC Services Proposal evaluations, the Contracting Agency must comply with ORS 279C.337.

### (2) Evaluation Factors.

(a) In basic negotiated construction contracting, where the only reason for an RFP is to consider factors other than price, those factors may consist of firm and personnel experience on similar projects, adequacy of equipment and physical plant, sources of supply, availability of key personnel, financial capacity, past performance, safety records, project understanding, proposed methods of construction, proposed milestone dates, references, service, and related matters that could affect the cost or quality of the Work.

(b) In CM/GC contracting, in addition to (a) above, those factors may also include the ability to respond to the technical complexity or unique character of the project, analyze and propose solutions or approaches to complex project problems, analyze and propose value engineering options, analyze and propose energy efficiency measures or alternative energy options, coordinate multiple disciplines on the project, effectively utilize the time available to commence and complete the improvement, and related matters that could affect the cost or quality of the Work.

(c) In Design-Build contracting, in addition to (a) and (b) above, those factors may also include design professional qualifications, specialized experience, preliminary design submittals, technical merit, design-builder team experience and related matters that could affect the cost or quality of the Work.

(d) In ESPC contracting, in addition to the factors set forth in subsections (a), (b) and (c) above, those factors may also include sample Technical Energy Audits from similar projects, sample M & V reports, financial statements and related information of the ESCO for a time period established in the RFP, financial statements and related information of joint venturers comprising the ESCO, the ESCO’s capabilities and experience in performing energy baseline studies for facilities (independently or in cooperation with an independent third-party energy baseline consultant), past performance of the ESCO in meeting energy guarantee Contract levels, the specific Person that will provide the Energy Savings Guarantee to be offered by the ESCO, the ESCO’s management plan for the project, information on the specific methods, techniques and equipment that the ESCO will use in the performance of the Work under the ESPC, the ESCO’s team members and consultants to be assigned to the project, the ESCO’s experience in the Energy Savings Performance Contracting field, the ESCO’s experience acting as the prime contractor on previous ESPC projects (as opposed to a sub-contractor or consultant to a prime ESCO), the ESCO’s vendor and product neutrality related to the development of ECMs, the ESCO’s project history related to removal from an ESPC project or the inability or unwillingness of the ESCO to complete an ESPC project, the ESCO’s M & V capabilities and experience (independently or in cooperation with an independent third-party M & V consultant), the ESCO’s ability to explain the unique risks associated with ESPC projects and the assignment of risk in the particular project between the Contracting Agency and the ESCO, the ESCO’s equipment performance guarantee policies and procedures, the ESCO’s energy savings and cost savings guarantee policies and procedures, the ESCO’s project cost guarantee policies and procedures, the ESCO’s pricing methodologies, the price that the ESCO will charge for the Technical Energy Audit phase of the Work and the ESCO’s fee structure for all phases of the ESPC.

(3) **Contract Negotiations.** Contract terms may be negotiated to the extent allowed by the RFP and OAR 137-049-0600 to 137-049-0690, provided that the general Work scope remains the same and that the field of competition does not change as a result of material changes to the requirements stated in the Solicitation Document. See 137-049-0650. Terms that may be negotiated consist of details of Contract performance, methods of construction, timing, assignment of risk in specified areas, fee, and other matters that could affect the cost or quality of the Work. For the CM/GC Method, terms that may be negotiated also include the specific scope of pre-construction services, the GC Work, any Early Work and other construction Work to be performed by the CM/GC, and any other terms that the Contracting Agency has identified as being subject to negotiation, consistent with the requirements of OAR 137-049-0690. In ESPC contracting, terms that may be negotiated also include the scope of preliminary design of ECMs to be evaluated by the parties during the Technical Energy Audit phase of the Work, the scope of Personal Services and Work to be per-

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formed by the ESCO during the Project Development Plan phase of the Work, the detailed provisions of the Energy Savings Guarantee to be provided by the ESCO and scope of Work, methodologies and compensation terms and conditions during the design and construction phase and M & V phase of the Work, consistent with the requirements of OAR 137-049-0680.

Stat. Auth.: ORS 279C.335 & 279A.065

Stats. Implemented: ORS 279C.335, 279A.065 & 351.086

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

## 137-049-0650

### Requests for Proposals (“RFP”)

(1) **Generally.** The use of competitive Proposals must be specially authorized for a Public Improvement Contract under the competitive bidding exception and exemption requirements of ORS 279C.335, OAR 137-049-0130 and 137-049-0600 to 137-049-0690. Also see ORS 279C.337 and 279C.400 to 279C.410 for statutory requirements regarding competitive Proposals and OAR 137-049-0640 regarding competitive Proposal procedures.

(2) **Solicitation Documents.** In addition to the Solicitation Document requirements of OAR 137-049-0200, this rule applies to the requirements for Requests for Proposals. RFP Solicitation Documents shall conform to the following standards:

(a) The Contracting Agency shall set forth selection criteria in the Solicitation Document. Examples of evaluation criteria include price or cost, quality of a product or service, past performance, management, capability, personnel qualification, prior experience, compatibility, reliability, operating efficiency, expansion potential, experience of key personnel, adequacy of equipment or physical plant, financial wherewithal, sources of supply, references and warranty provisions. See OAR 137-049-0640 regarding proposal evaluation and evaluation factors. Evaluation factors need not be precise predictors of actual future costs and performance, but to the extent possible, such factors must be reasonable estimates based on information available to the Contracting Agency. Subject to ORS 279C.410(4), the Solicitation Document may provide for discussions with Proposers to be conducted for the purpose of Proposal evaluation prior to award or prior to establishing any Competitive Range;

(b) When the Contracting Agency is willing to negotiate terms and conditions of the Contract or allow submission of revised Proposals following discussions, the Contracting Agency shall identify the specific terms and conditions in or provisions of the Solicitation Document that are subject to negotiation or discussion and authorize Offerors to propose certain alternative terms and conditions in lieu of the terms and conditions the Contracting Agency has identified as authorized for negotiation. The Contracting Agency shall describe the evaluation, discussion and negotiation processes, including how the Contracting Agency will establish the Competitive Range, if any;

(c) The anticipated size of any Competitive Range must be stated in the Solicitation Document, but may be decreased if the number of Proposers that submit responsive Proposals is less than the specified number, or may be increased as provided in OAR 137-049-0650(4)(a)(B);

(d) When the Contracting Agency intends to Award Contracts to more than one Proposer, the Contracting Agency shall identify in the Solicitation Document the manner in which it will determine the number of Contracts it will Award. The Contracting Agency shall also include the criteria it will use to determine how the Contracting Agency will endeavor to achieve optimal value, utility and substantial fairness when selecting a particular Contractor to provide Personal Services or Work from those Contractors Awarded Contracts.

### (3) Evaluation of Proposals.

(a) **Evaluation.** The Contracting Agency shall evaluate Proposals only in accordance with criteria set forth in the RFP and applicable law. The Contracting Agency shall evaluate Proposals to determine the Responsible Proposer or Proposers submitting the best Responsive Proposal or Proposals.

(A) **Clarifications.** In evaluating Proposals, a Contracting Agency may seek information from a Proposer to clarify the Proposer’s Proposal. A Proposer shall submit Written and Signed clarifications and such clarifications shall become part of the Proposer’s Proposal.

(B) **Limited Negotiation.** If the Contracting Agency did not permit negotiation in its Request for Proposals, the Contracting Agency may, nonetheless, negotiate with the highest-ranked Proposer, but may then only negotiate the:

(i) Statement of Work; and

(ii) Contract Price as it is affected by negotiating the statement of Work. The process for discussions or negotiations that is outlined and

explained in subsections (5)(b) and (6) of this rule does not apply to this limited negotiation.

(b) **Discussions; Negotiations.** If the Contracting Agency permitted discussions or negotiations in the Request for Proposals, the Contracting Agency shall evaluate Proposals and establish the Competitive Range, and may then conduct discussions and negotiations in accordance with this rule.

(A) If the Solicitation Document provided that discussions or negotiations may occur at Contracting Agency’s discretion, the Contracting Agency may forego discussions and negotiations and evaluate all Proposals in accordance with this rule.

(B) If the Contracting Agency proceeds with discussions or negotiations, the Contracting Agency shall establish a negotiation team tailored for the acquisition. The Contracting Agency’s team may include legal, technical, auditing and negotiating personnel.

(c) **Cancellation.** Nothing in this rule shall restrict or prohibit the Contracting Agency from canceling the solicitation at any time.

### (4) Competitive Range; Protest; Award.

(a) **Determining Competitive Range.**

(A) If the Contracting Agency does not cancel the solicitation, after the Opening the Contracting Agency will evaluate all Proposals in accordance with the evaluation criteria set forth in the Request for Proposals. After evaluation of all Proposals in accordance with the criteria set forth in the Request for Proposals, the Contracting Agency will rank the Proposers based on the Contracting Agency’s scoring and determine the Competitive Range.

(B) The Contracting Agency may increase the number of Proposers in the Competitive Range if the Contracting Agency’s evaluation of Proposals establishes a natural break in the scores of Proposers indicating a number of Proposers greater than the initial Competitive Range are closely competitive, or have a reasonable chance of being determined the best Proposer after the Contracting Agency’s evaluation of revised Proposals submitted in accordance with the process described in this rule.

(b) **Protesting Competitive Range.** The Contracting Agency shall provide Written notice to all Proposers identifying Proposers in the Competitive Range. A Proposer that is not within the Competitive Range may protest the Contracting Agency’s evaluation and determination of the Competitive Range in accordance with OAR 137-049-0450.

(c) **Intent to Award; Discuss or Negotiate.** After the protest period provided in accordance with these rules expires, or after the Contracting Agency has provided a final response to any protest, whichever date is later, the Contracting Agency may either:

(A) Provide Written notice to all Proposers in the Competitive Range of its intent to Award the Contract to the highest-ranked Proposer in the Competitive Range.

(i) An unsuccessful Proposer may protest the Contracting Agency’s intent to Award in accordance with OAR 137-049-0450.

(ii) After the protest period provided in accordance with OAR 137-049-0450 expires, or after the Contracting Agency has provided a final response to any protest, whichever date is later, the Contracting Agency shall commence final Contract negotiations with the highest-ranked Proposer in the Competitive Range; or

(B) Engage in discussions with Proposers in the Competitive Range and accept revised Proposals from them, and, following such discussions and receipt and evaluation of revised Proposals, conduct negotiations with the Proposers in the Competitive Range.

(5) **Discussions; Revised Proposals.** If the Contracting Agency chooses to enter into discussions with and receive revised Proposals from the Proposers in the Competitive Range, the Contracting Agency shall proceed as follows:

(a) **Initiating Discussions.** The Contracting Agency shall initiate oral or Written discussions with all of the Proposers in the Competitive Range regarding their Proposals with respect to the provisions of the RFP that the Contracting Agency identified in the RFP as the subject of discussions. The Contracting Agency may conduct discussions for the following purposes:

(A) Informing Proposers of deficiencies in their initial Proposals;

(B) Notifying Proposers of parts of their Proposals for which the Contracting Agency would like additional information; and

(C) Otherwise allowing Proposers to develop revised Proposals that will allow the Contracting Agency to obtain the best Proposal based on the requirements and evaluation criteria set forth in the Request for Proposals.

(b) **Conducting Discussions.** The Contracting Agency may conduct discussions with each Proposer in the Competitive Range necessary to fulfill the purposes of this section, but need not conduct the same amount of discussions with each Proposer. The Contracting Agency may terminate discussions with any Proposer in the Competitive Range at any time.

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However, the Contracting Agency shall offer all Proposers in the Competitive Range the opportunity to discuss their Proposals with Contracting Agency before the Contracting Agency notifies Proposers of the date and time pursuant to this section that revised Proposals will be due.

(A) In conducting discussions, the Contracting Agency:

(i) Shall treat all Proposers fairly and shall not favor any Proposer over another;

(ii) Shall not discuss other Proposers' Proposals;

(iii) Shall not suggest specific revisions that a Proposer should make to its Proposal, and shall not otherwise direct the Proposer to make any specific revisions to its Proposal.

(B) At any time during the time allowed for discussions, the Contracting Agency may:

(i) Continue discussions with a particular Proposer;

(ii) Terminate discussions with a particular Proposer and continue discussions with other Proposers in the Competitive Range; or

(iii) Conclude discussions with all remaining Proposers in the Competitive Range and provide notice to the Proposers in the Competitive Range to submit revised Proposals.

(c) Revised Proposals. If the Contracting Agency does not cancel the solicitation at the conclusion of the Contracting Agency's discussions with all remaining Proposers in the Competitive Range, the Contracting Agency shall give all remaining Proposers in the Competitive Range notice of the date and time by which they must submit revised Proposals. This notice constitutes the Contracting Agency's termination of discussions, and Proposers must submit revised Proposals by the date and time set forth in the Contracting Agency's notice.

(A) Upon receipt of the revised Proposals, the Contracting Agency shall evaluate the revised Proposals based upon the evaluation criteria set forth in the Request for Proposals, and rank the revised Proposals based on the Contracting Agency's scoring.

(B) The Contracting Agency may conduct discussions with and accept only one revised Proposal from each Proposer in the Competitive Range unless otherwise set forth in the Request for Proposals.

(d) Intent to Award; Protest. The Contracting Agency shall provide Written notice to all Proposers in the Competitive Range of the Contracting Agency's intent to Award the Contract. An unsuccessful Proposer may protest the Contracting Agency's intent to Award in accordance with OAR 137-049-0450. After the protest period provided in accordance with that rule expires, or after the Contracting Agency has provided a final response to any protest, whichever date is later, the Contracting Agency shall commence final Contract negotiations.

(6) **Negotiations.**

(a) Initiating Negotiations. The Contracting Agency may determine to commence negotiations with the highest-ranked Proposer in the Competitive Range following the:

(A) Initial determination of the Competitive Range; or

(B) Conclusion of discussions with all Proposers in the Competitive Range and evaluation of revised Proposals.

(b) Conducting Negotiations.

(A) Scope. The Contracting Agency may negotiate:

(i) The statement of Work;

(ii) The Contract Price as it is affected by negotiating the statement of Work; and

(iii) Any other terms and conditions reasonably related to those expressly authorized for negotiation in the Request for Proposals. Accordingly, Proposers shall not submit, and Contracting Agency shall not accept, for negotiation any alternative terms and conditions that are not reasonably related to those expressly authorized for negotiation in the Request for Proposals.

(c) Continuing Negotiations. If the Contracting Agency terminates negotiations with a Proposer, the Contracting Agency may then commence negotiations with the next highest scoring Proposer in the Competitive Range, and continue the process described in this rule until the Contracting Agency has:

(A) Determined to Award the Contract to the Proposer with whom it is currently negotiating; or

(B) Completed one round of negotiations with all Proposers in the Competitive Range, unless the Contracting Agency provided for more than one round of discussions or negotiations in the Request for Proposals, in which case the Contracting Agency may proceed with any authorized further rounds of discussions or negotiations.

(7) **Terminating Discussions or Negotiations.** At any time during discussions or negotiations conducted in accordance with this rule, the Contracting Agency may terminate discussions or negotiations with the

Proposer with whom it is currently conducting discussions or negotiations if the Contracting Agency reasonably believes that:

(a) The Proposer is not discussing or negotiating in good faith; or

(b) Further discussions or negotiations with the Proposer will not result in the parties agreeing to the terms and conditions of a final Contract in a timely manner.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.400 - 279C.410

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

## 137-049-0660

### RFP Pricing Mechanisms

(1) A Request for Proposals may result in a Contract with a lump-sum Contract Price or a fixed Contract Price, as in the case of competitive bidding. Alternatively, a Request for Proposals may result in a cost reimbursement Contract with a GMP or some other maximum price specified in the Contract.

(2) Economic incentives or disincentives may be included to reflect stated Contracting Agency purposes related to time of completion, safety or other Public Contracting objectives, including but not limited to total least cost mechanisms such as life cycle costing.

(3) A Guaranteed Maximum Price may be used as the pricing mechanism for CM/GC Services Contracts where a total Contract Price is provided in the design phase in order to assist the Contracting Agency in determining whether the project scope is within the Contracting Agency's budget, and allowing for design changes during preliminary design rather than after final design services have been completed.

(a) If the collaborative process described above in this section (3) is successful, the Contractor shall propose a final GMP, which may be accepted by the Contracting Agency and included within the Contract.

(b) If the collaborative process described above in this section (3) is not successful, and no mutually agreeable resolution on the GMP for the project construction Work can be achieved with the Contractor, then the Contracting Agency shall terminate the Contract. The public Contracting Agency may then proceed to negotiate a new Contract (and GMP) with the firm that was next ranked in the original selection process, or employ other means for continuing the project under ORS Chapter 279C.

(4) When cost reimbursement Contracts are utilized, regardless of whether a GMP is included, the Contracting Agency shall provide for audit controls that will effectively verify rates and ensure that costs are reasonable, allowable and properly allocated.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.335

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

## 137-049-0690

### Construction Manager/General Contractor Services ("CM/GC Services")

(1) **General.** The CM/GC Method is a technically complex project delivery system. Contracting Agencies shall use this contracting method only with the assistance of legal counsel with substantial experience and necessary expertise in using the CM/GC Method, as well as knowledgeable staff, consultants or both staff and consultants who have a demonstrated capability of managing the CM/GC process in the necessary disciplines of engineering, construction scheduling and cost control, accounting, legal, Public Contracting and project management. Unlike the Design-Build form of contracting, the CM/GC Method does not contemplate a "single point of responsibility" under which the CM/GC is responsible for successful completion of all Work related to a performance Specification. The CM/GC has defined contract obligations, including responsibilities as part of the project team along with the Contracting Agency and design professional, although with the CM/GC Method there is a separate contract between the Contracting Agency and design professional. In order to utilize the CM/GC Method, the Contracting Agency must be able to reasonably anticipate the following types of benefits:

(a) Time Savings. With the CM/GC Method, the Public Improvement has significant schedule ramifications, such that concurrent design and construction are necessary in order to meet critical deadlines and shorten the overall duration of construction. The Contracting Agency may consider operational and financial data that show significant savings or increased opportunities for generating revenue as a result of early completion, as well as less disruption to public facilities as a result of shortened construction periods;

(b) Cost Savings. With the CM/GC Method, early CM/GC input during the design process is expected to contribute to significant cost savings.

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The Contracting Agency may consider value engineering, building systems analysis, life cycle costing analysis and construction planning that lead to cost savings. The Contracting Agency shall specify any special factors influencing this analysis, including high rates of inflation, market uncertainty due to material and labor fluctuations or scarcities, and the need for specialized construction expertise due to technical challenges; or

(c) **Technical Complexity.** With the CM/GC Method, the Public Improvement presents significant technical complexities that are best addressed by a collaborative or team effort between the Contracting Agency, design professionals, any Contracting Agency project management or technical consultants and the CM/GC, in which the CM/GC will assist in addressing specific project challenges through pre-construction Personal Services. The Contracting Agency may consider the need for CM/GC input on issues such as operations of the facility during construction, tenant occupancy, public safety, delivery of an early budget or GMP, financing, historic preservation, difficult remodeling projects and projects requiring complex phasing or highly coordinated scheduling.

(2) **Authority.** Contracting Agencies shall use the CM/GC form of contracting only in accordance with the requirements of these division 49 Model Rules and ORS 279C.337, when a competitive bidding exemption is approved. See particularly OAR 137-049-0600 on "Purpose" and 137-049-0620 on "Use of Alternative Contracting Methods".

(3) **Selection.** CM/GC selection criteria may include those factors set forth above in OAR 137-049-0640(2)(b).

(4) **Basis for Payment.** The CM/GC process adds specified construction manager Personal Services to traditional design-bid-build general contractor Work, requiring full Contract performance within a negotiated GMP, fixed Contract Price or other maximum Contract Price. For a GMP pricing method, the basis for payment is reimbursable direct costs as defined under the Contract, plus a fee constituting full payment for construction Work and Personal Services rendered, which together shall not exceed the GMP. See GMP definition at OAR 137-049-0610 and Pricing Mechanisms at 137-049-0660.

(5) **Contract Requirements.** Contracting Agencies shall conform their CM/GC contracting practices to the following requirements:

(a) **Nature of the Initial CM/GC Services Contract Document.** A solicitation for CM/GC Services is a Procurement for a Public Improvement, since the scope of the Procurement includes not only pre-construction Personal Services to be performed by the CM/GC, but also construction Work that is expected to result in a completed Public Improvement. In the traditional CM/GC Services contracting approach, the text of the resulting CM/GC Services Contract will include comprehensive contract provisions that will not only fully govern the relationship between the Contracting Agency and the CM/GC for the pre-construction Personal Services, but will also include the general contract provisions that will control the CM/GC's providing of the construction Work necessary to complete the project (with any remaining necessary construction-related contract provisions being added through Early Work amendments to the Contract, the GMP amendment to the Contract or, if necessary, a conventional amendment to the Contract). The traditional CM/GC Services contracting approach, however, also contemplates that the Contracting Agency will only authorize the CM/GC to perform the preconstruction Personal Services when the Contract is first executed unless construction Work is specifically included in the initial CM/GC Contract. Under this approach, the construction phase or phases of the CM/GC Services project are not yet authorized and the Contract only becomes a Public Improvement Contract once the parties amend the Contract, through an Early Work or a GMP amendment, to authorize the construction of a portion of the project or the entire project. See also OAR 839-025-0020, regarding the Bureau of Labor and Industries' determination of when a Contract for CM/GC Services becomes a "public works" Contract for purposes of paying prevailing wage rates for construction Work under the CM/GC Contract.

(b) **Setting the GMP, Fixed Contract Price or Other Maximum Contract Price.** The GMP, fixed Contract price or other maximum Contract Price shall be set at an identified time consistent with industry practice and project conditions and after supporting information reasonably considered necessary to its use has been developed, which will normally take place at the end of the design development phase of the project. The supporting information for the GMP must define with particularity both what Personal Services and construction Work are included and excluded from the GMP, fixed Contract price or other maximum Contract Price. A set of project drawings and Specifications shall be produced establishing the scope of construction Work contemplated by the GMP, fixed Contract price or other maximum Contract Price.

(c) **Adjustments to the GMP, Fixed Contract Price or Other Maximum Contract Price.** The Contract shall clearly identify the standards or factors under which changes or additional construction Work will be considered outside of the Work scope that warrants an increase in the GMP, fixed Contract price or other maximum Contract Price, as well as criteria for decreasing the GMP, fixed Contract price or other maximum Contract Price. The GMP, fixed Contract price or other maximum Contract Price shall not be increased without a concomitant increase to the scope of the Work defined at the establishment of the GMP, fixed Contract price or other maximum Contract Price or most recent amendment to the GMP, fixed Contract price or other maximum Contract Price. An increase to the scope of the Work may take the form of conventional additions to the project scope, as well as corrections to the Contract terms and conditions, additions to insurance coverage required by the Contracting Agency and other changes to the Work.

(d) **Cost Savings.** The Contract shall clearly identify the disposition of any Cost Savings resulting from completion of the Work below the GMP, fixed Contract price or other maximum Contract Price; that is, under what circumstances, if any, the CM/GC might share in those Cost Savings, or whether the Cost Savings accrue only to the Contracting Agency's benefit. Unless there is a clearly articulated reason for sharing the Cost Savings set forth in the Contract, the Cost Savings must accrue to the Contracting Agency.

(e) **Cost Reimbursement.** The Contract shall clearly identify what items or categories of items are eligible for cost reimbursement within the GMP or other maximum Contract Price, including any category of GC Work costs (a general grouping of direct costs that are not separately invoiced, subcontracted or included within either overhead or fee), and may also incorporate a mutually-agreeable cost-reimbursement standard.

(f) **Audit.** Cost reimbursements shall be made subject to final audit adjustment, and the Contract shall establish an audit process to ensure that Contract costs are allowable, properly allocated and reasonable.

(g) **Fee.** Compensation for the CM/GC's Personal Services and construction Work, where the Contract uses a GMP, shall include a fee that is inclusive of profit, overhead and all other indirect or non-reimbursable costs. Costs determined to be included within the fee shall be expressly defined in the Contract terms and conditions at the time the Contracting Agency selects the CM/GC. The fee, which may be expressed as either a fixed dollar amount or as a proposed percentage of all reimbursable costs, shall be identified during and become an element of the selection process. It shall subsequently be expressed as a fixed amount for particular construction Work authorized to be performed, when Early Work is added to the Contract through an amendment and when the GMP is established. The CM/GC fee does not include any fee paid to the CM/GC for performing preconstruction services during a separate preconstruction phase.

(h) **Incentives.** The Contract shall clearly identify any economic incentives, the specific criteria that apply and their relationship to other financial elements of the Contract (including the GMP, fixed Contract price or other maximum Contract Price).

(i) **Controlled Insurance Programs.** For projects where an owner-controlled or contractor-controlled insurance program is permitted under ORS 737.602, the Contract shall clearly identify whether an owner-controlled or contractor-controlled insurance program is anticipated or allowable. If so, the Contract shall clearly identify (1) anticipated cost savings from reduced premiums, claims reductions and other factors, (2) the allocation of cost savings, and (3) safety responsibilities, incentives or both safety responsibilities and incentives.

(j) **Early Work.** The RFP shall clearly identify, whenever feasible, the circumstances under which any Early Work may be authorized and undertaken for compensation prior to establishing the GMP, fixed Contract price or other maximum Contract Price.

(k) **Subcontractor Selection.** Subcontracts under the Contract are not Public Contracts within the meaning of the Code. However, the Contract must include provisions that clearly meet the requirements of ORS 279C.337(3) and other Contracting Agency requirements. Within the scope of ORS 279C.337(3), the CM/GC's subcontractor selection process must meet the following parameters:

(A) **Absent a written justification prepared by the CM/GC and approved by the Contracting Agency as more particularly provided for in this section, the CM/GC's Subcontractor selection process must be "competitive",** meaning that the process should include publicly-advertised subcontractor solicitations and be based on a low-bid competitive method, a low-quote competitive method for contracts in a specified dollar range agreeable to the Contracting Agency, or a method whereby both price and

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qualifications of the subcontractors are evaluated in a competitive environment, consistent with the RFP and Contract requirements;

(B) When the Subcontractor selection process for a particular Work package will not be “competitive” as provided for in this section, the process must meet the following requirements:

(i) The CM/GC must prepare and submit a written justification to the Contracting Agency, explaining the project circumstances that support a non-competitive Subcontractor selection process for a particular Work package, including, but not limited to, Emergency circumstances, the CM/GC’s need to utilize a key Subcontractor member of the CM/GC’s project team consistent with the CM/GC’s project proposal, the need to meet other specified Contract requirements, the continuation or expansion of an existing Subcontractor agreement that was awarded through a “competitive process” along with facts supporting the continuation or expansion of the Subcontractor agreement, or a “sole source” justification;

(ii) For a “sole source” selection of a subcontractor to proceed, the Contracting Agency must evaluate the written justification provided by the CM/GC and must find that critical project efficiencies require utilization of labor, services or materials from one subcontractor; that technical compatibility issues on the project require labor, services or materials from one subcontractor; that particular labor, services or materials are needed as part of an experimental or pilot project or as part of an experimental or pilot aspect of the project; or that other project circumstances exist to support the conclusion that the labor, services or materials are available from only one subcontractor;

(iii) The CM/GC must provide an independent cost estimate for the Work package that will be subject to the non-competitive process, if required by the Contracting Agency;

(iv) The CM/GC must fully respond to any questions or comments submitted to the CM/GC by the Contracting Agency; and

(v) The Contracting Agency must approve the CM/GC’s use of the non-competitive Subcontractor selection process prior to the CM/GC’s pursuit of the non-competitive process.

(C) A competitive selection process may be preceded by a publicly advertised sub-contractor pre-qualification process, with only those subcontractors meeting the pre-qualification requirements being invited to participate in the later competitive process through which the CM/GC will select the subcontractor to perform the construction Work described in the selection process;

(D) If the CM/GC or an Affiliate or subsidiary of the CM/GC will be included in the subcontractor selection process to perform particular construction Work on the project, the CM/GC must disclose that fact in the selection process documents and announcements. The Contract must also identify the conditions, processes and procedures the CM/GC will utilize in that competitive process in order to make the process impartial, competitive and fair, including but not limited to objective, independent review and opening of bids or proposals for the elements of Work involved, by a representative of the Contracting Agency or another independent third party.

(I) Subcontractor Approvals and Protests. The Contract shall clearly establish whether the Contracting Agency must approve subcontract awards, and to what extent, if any, the Contracting Agency will resolve or be involved in the resolution of protests of the CM/GC’s selection of subcontractors and suppliers. The procedures and reporting mechanisms related to the resolution of sub-contractor and supplier protests shall be established in the Contract with certainty, including the CM/GC’s roles and responsibilities in this process and whether the CM/GC’s subcontracting records are considered to be public records. In any event, the Contracting Agency must retain the right to monitor the subcontracting process in order to protect the Contracting Agency’s interests and to confirm the CM/GC’s compliance with the Contract and with applicable statutes, administrative rules and other legal requirements.

(m) CM/GC Self-Performance or Performance by CM/GC Affiliates or Subsidiaries Without Competition. Consistent with the requirements of ORS 279C.337(3)(c), the Contract must establish the conditions under which the CM/GC or an Affiliate or subsidiary of the CM/GC may perform elements of the construction Work without competition from subcontractors, including, for example, job-site GC Work. Other than for GC Work, in order for the CM/GC or an Affiliate or subsidiary of the CM/GC to perform elements of the construction Work without competition from subcontractors, the CM/GC must provide, or must have included in the CM/GC’s RFP proposal to perform CM/GC Services for the project, a detailed proposal for performance of the Work by the CM/GC or an Affiliate or subsidiary of the CM/GC. If required by the Contracting Agency, the CM/GC’s proposal to perform the construction Work must be supported by at least one independent cost estimate prior to the Work being included in the Contract.

(n) Unsuccessful Subcontractor Briefing. ORS 279C.337(3)(e) is designed to allow a subcontractor who was not selected by the CM/GC to perform a particular element of the construction Work to obtain specific information from the CM/GC, and meet with the CM/GC to discuss the subcontractor qualification and selection process involved and the CM/GC’s subcontractor selection decisions, in order to better understand why the subcontractor was not successful in being selected to perform the particular element of the Work and to improve the subcontractor’s substantive qualifications or the subcontractor’s methods in competing for elements of the Work for the particular project involved, or for future projects. The briefing meetings may be held with individual subcontractors or, if the subcontractors agree, in groups of subcontractors, with those groups established by bid package or other designation agreed to by the contracting agency and the CM/GC. Nevertheless, the CM/GC is not obligated to provide this briefing opportunity unless the CM/GC receives a written request from a subcontractor to discuss the subcontractor qualification and selection process involved. Unless the Contracting Agency and the CM/GC agree on a different schedule, the CM/GC Contract should include provisions:

(A) Allowing a subcontractor 60 days from the CM/GC’s notice of award of a subcontract for a particular Work package to request, in writing, a post-selection meeting with the CM/GC under this section; and

(B) Requiring the CM/GC to set a meeting with the subcontractor under this section within 45 days of the subcontractor’s written request.

(o) Performance and Payment Bonds. Provided no construction Work is included with the preconstruction services to be performed under the initial form of the CM/GC Contract, no performance bond or payment bond is required to be provided by the CM/GC at the time of Contract signing, consistent with ORS 279C.380. Once construction Work is included in the Contract and authorized by the Contracting Agency to be performed by the CM/GC, however, the CM/GC must provide a performance bond and payment bond in the full amount of any Early Work to be performed by the CM/GC, or the full amount of the GMP, fixed price or other maximum contract price, as applicable. Furthermore, in the event additional Early Work is added to the CM/GC Contract after the initial Early Work or in the event an amendment to the CM/GC Contract is made so that the GMP, fixed price or other maximum contract price must be increased, the performance bond and the payment bond must be increased in an amount equal to the additional Early Work or the increased GMP, fixed price or other maximum contract price.

(p) Independent Review of CM/GC Performance; Conflicts of Interest. If a Contracting Agency requires independent review, monitoring, inspection or other oversight of a CM/GC’s performance of pre-construction Personal Services, construction Work or both pre-construction Personal Services and construction Work, the Contracting Agency must obtain those independent review services from a Contractor independent of the CM/GC, the CM/GC’s Affiliates and the CM/GC’s Subcontractors, pursuant to the requirements of ORS 279C.307. However, 279C.307 does not prohibit the following:

(A) The CM/GC’s performance of both pre-construction Personal Services and construction Work that are included within the definition of CM/GC Services, consistent with ORS 279C.307(2); or

(B) The CM/GC’s performance of internal quality control services, quality assurance services or other internal peer review of CM/GC work product that is intended to confirm the CM/GC’s performance of the CM/GC Contract according to its terms.

(q) Socio-Economic Programs. The Contract shall clearly identify conditions relating to any required socio-economic programs (such as Affirmative Action or Prison Inmate Labor Programs), including the manner in which such programs affect the CM/GC’s subcontracting requirements, the enforcement mechanisms available, and the respective responsibilities of the CM/GC and Contracting Agency.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.335, 279C.337 & 279C.380(2)

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

## 137-049-0820

### Retainage

(1) Withholding of Retainage. A Contracting Agency shall not retain an amount in excess of five percent of the Contract Price for Work completed. If the Contractor has performed at least 50 percent of the Contract Work and is progressing satisfactorily, upon the Contractor’s submission of Written application containing the surety’s Written approval, the Contracting Agency may, in its discretion, reduce or eliminate retainage on any remaining progress payments. The Contracting Agency shall respond

# ADMINISTRATIVE RULES

in Writing to all such applications within a reasonable time. When the Contract Work is 97-1/2 percent completed, the Contracting Agency may, at its discretion and without application by the Contractor, reduce the retained amount to 100 percent of the value of the remaining unperformed Contract Work. A Contracting Agency may at any time reinstate retainage. Retainage shall be included in the final payment of the Contract Price.

(2) Form of Retainage. Unless a Contracting Agency that reserves an amount as retainage finds in writing that accepting a bond or instrument described in part (a) or (b) of this section poses an extraordinary risk that is not typically associated with the bond or instrument, the Contracting Agency, in lieu of withholding moneys from payment, shall accept from the Contractor:

(a) Bonds, securities or other instruments that are deposited and accepted as provided in subsection (4)(a) of this rule; or

(b) A surety bond deposited as provided in subsection (4)(b) of this rule.

(3) Deposit in interest-bearing accounts. Upon request of the Contractor, a Contracting Agency shall deposit cash retainage in an interest-bearing account in a bank, savings bank, trust company, or savings association, for the benefit of the Contracting Agency. Earnings on such account shall accrue to the Contractor. State Contracting Agencies shall establish the account through the State Treasurer.

(4) Alternatives to cash retainage. In lieu of cash retainage to be held by a Contracting Agency, the Contractor may substitute one of the following:

(a) Deposit of bonds, securities or other instruments:

(A) The Contractor may deposit bonds, securities or other instruments with the Contracting Agency or in any bank or trust company to be held for the benefit of the Contracting Agency. If the Contracting Agency accepts the deposit, the Contracting Agency shall reduce the cash retainage by an amount equal to the value of the bonds and securities, and reimburse the excess to the Contractor.

(B) Bonds, securities or other instruments deposited or acquired in lieu of cash retainage must be of a character approved by the Oregon Department of Administrative Services, which may include, without limitation:

(i) Bills, certificates, notes or bonds of the United States.

(ii) Other obligations of the United States or agencies of the United States.

(iii) Obligations of a corporation wholly owned by the Federal Government.

(iv) Indebtedness of the Federal National Mortgage Association.

(v) General obligation bonds of the State of Oregon or a political subdivision of the State of Oregon.

(vi) Irrevocable letters of credit issued by an insured institution, as defined in ORS 706.008.

(C) Upon the Contracting Agency's determination that all requirements for the protection of the Contracting Agency's interests have been fulfilled, it shall release to the Contractor all bonds and securities deposited in lieu of retainage.

(b) Deposit of surety bond. A Contracting Agency, at its discretion, may allow the Contractor to deposit a surety bond in a form acceptable to the Contracting Agency in lieu of all or a portion of funds retained or to be retained. A Contractor depositing such a bond shall accept surety bonds from its subcontractors and suppliers in lieu of retainage. In such cases, retainage shall be reduced by an amount equal to the value of the bond, and the excess shall be reimbursed.

(5) Recovery of costs. A Contracting Agency may recover from the Contractor all costs incurred in the proper handling of retainage by reduction of the final payment.

(6) Additional Retainage When Certified Payroll Statements Not Filed. Pursuant to ORS 279C.845(7), if a Contractor is required to file certified payroll statements and fails to do so, the Contracting Agency shall retain 25 percent of any amount earned by the Contractor on a Public Works Contract until the Contractor has filed such statements with the Contracting Agency. The Contracting Agency shall pay the Contractor the amount retained under this provision within 14 days after the Contractor files the certified statements, regardless of whether a subcontractor has filed such statements (but see 279C.845(1) regarding the requirement for both contractors and subcontractors to file certified statements with the Contracting Agency). See BOLI rule at OAR 839-025-0010.

Stat. Auth.: ORS 279A.065 & 279C.845

Stats. Implemented: ORS 279C.560, 279C.570 & 701.420

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 10-2014(Temp), f. & cert. ef. 7-1-14 thru 12-26-14

**Rule Caption:** Amends Legal Sufficiency Rule to temporarily exempt transitional agreements with universities with governing boards.

**Adm. Order No.:** DOJ 11-2014(Temp)

**Filed with Sec. of State:** 7-11-2014

**Certified to be Effective:** 7-11-14 thru 9-30-14

**Notice Publication Date:**

**Rules Amended:** 137-045-0050

**Subject:** Adds an exemption to Attorney General's rule granting exemptions from legal sufficiency approval requirement, OAR 137-045-0050(20), for transitional agreements with the University of Oregon, Portland State University, and Oregon State University. The exemption is temporary, extending from July 1, 2014, to September 30, 2014.

**Rules Coordinator:** Carol Riches—(503) 947-4700

## 137-045-0050

### Exemptions from Legal Sufficiency Approval Based on Risk Assessment

The Attorney General has determined that the degree of risk assumed by Agencies is not materially reduced by legal review and approval of individual Public Contracts within the types of Public Contracts listed below. The Attorney General exempts from the legal sufficiency approval requirement under ORS 291.047 the Public Contracts falling within the types of Public Contracts listed below:

(1) Adoption Assistance Agreements. A document of understanding between the Department of Human Services and adoptive parents of a special needs child as defined under title IV-E at section 473(c) of the Social Security Act.

(2) Amendments to Contracts Other than Public Improvement and Loan Contracts. A written amendment to a Public Contract that is not a Public Improvement or loan Contract, if all of the following apply:

(a) The Public Contract being amended was approved for legal sufficiency.

(b) The amendment modifies only one or more of the following, and related payment obligations as necessary:

(A) The Statement of Work to require the contractor to provide additional or fewer goods, services or other work within the general scope of the Last Reviewed Contract.

(B) The expiration date of the Public Contract; Technical Specifications; time, place, quantity or form of delivery, or price.

(C) Any provisions as specified in writing at the time of approval by the Assistant Attorney General who provided legal sufficiency approval of the Last Reviewed Contract, based on the Assistant Attorney General's finding that the degree of risk assumed by the Agency will not be materially reduced by legal review and approval of the provisions.

(c) The aggregate increase in payments scheduled to be made by the Agency, or the aggregate decrease in payments scheduled to be received by the Agency, under the amendment, and all prior amendments exempted from the legal sufficiency approval requirement under this section subsequent to the Last Reviewed Contract, does not exceed the greater of:

(A) \$150,000; or

(B) Any limits specified in writing at the time of approval by the Assistant Attorney General who provided legal sufficiency approval of the Last Reviewed Contract, based on the Assistant Attorney General's finding that the degree of risk assumed by the Agency will not be materially reduced by legal review and approval of the provisions.

(3) Amendments to Public Improvement Contracts.

(a) A written change order or other amendment to a Public Improvement Contract, other than a construction manager/general contractor contract, as provided in subsection (b) or a design-build contract or an energy savings performance contract as provided in subsection (c) of this section, if all of the following apply:

(A) The Public Improvement Contract being amended was approved for legal sufficiency.

(B) The change order or other amendment is within the general scope of the Public Improvement Contract.

(C) The change order or other amendment is implemented in accordance with the provisions of the Public Improvement Contract governing change orders and other types of amendments.

(D) The change order or other amendment modifies only one or both of the following and related payment obligations as necessary:

(i) The Statement of Work so as to require the contractor to provide additional or fewer materials, tools, equipment, labor or professional or

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non-professional services within the general scope of the Last Reviewed Contract;

(ii) The substantial completion date, the final completion date, or interim milestone dates of the Public Improvement Contract; Technical Specifications; time, place, quantity or form of delivery of materials, tools, equipment or services; price.

(E) Any increase in Agency payments under the change order or other amendment does not exceed ten percent (10%) of the total amount of Agency payments scheduled to be made under the Last Reviewed Contract, and the aggregate increase in Agency payments scheduled to be made under that change order or other amendment, and all prior change orders or other amendments subsequent to the Last Reviewed Contract do not exceed thirty-three percent (33%) of that total amount.

(b) An amendment to a CM/GC contract (as defined in OAR 137-049-0610) that complies with either subsection (A) or (B) below, whether the amendment is in the form of a change order or other amendment:

(A) The amendment is made before construction services have been authorized under the CM/GC contract and complies with all of the following:

(i) The CM/GC contract being amended was approved for legal sufficiency.

(ii) The amendment is implemented in accordance with the provisions of the CM/GC contract governing change orders and other amendments.

(iii) The amendment modifies only one or more of the following and related payment obligations as necessary:

(I) The Statement of Work so as to require the CM/GC to provide additional or fewer materials, equipment, or pre-construction services within the general scope of the Last Reviewed Contract.

(II) The substantial completion date, the final completion date, or interim milestone dates of the CM/GC contract; Technical Specifications; time, place, quantity or form of delivery of services; or price.

(iv) Any increase in Agency payments under the amendment does not exceed ten percent (10%) of the total amount of Agency payments scheduled to be made under the Last Reviewed Contract, and the aggregate increase in Agency payments scheduled to be made under that amendment and all prior amendments subsequent to the Last Reviewed Contract do not exceed thirty-three percent (33%) of that total amount.

(B) The amendment is made after construction services have been authorized under the CM/GC contract and complies with all of the following:

(i) The CM/GC contract being amended was approved for legal sufficiency.

(ii) The amendment is implemented in accordance with the provisions of the CM/GC contract governing change orders and other types of amendments.

(iii) The amendment is not the first amendment that authorizes construction services under the CM/GC contract.

(iv) The amendment does not establish the guaranteed maximum price ("GMP") under the CM/GC contract.

(v) The amendment modifies only one or both of the following and related payment obligations as necessary.

(I) The Statement of Work so as to require the CM/GC to provide additional or fewer materials, tools, equipment, labor or professional or non-professional services within the general scope of the Last Reviewed Contract.

(II) The substantial completion date, the final completion date, or interim milestone dates of the CM/GC contract; Technical Specifications; time, place, quantity or form of delivery of materials, tools, equipment or services; or the price.

(vi) The amendment does not increase the contract price (whether a GMP, fixed price, lump sum or other price) established under the Last Reviewed Contract by more than \$500,000.

(vii) The amendment and all prior amendments subsequent to the Last Reviewed Contract in the aggregate do not increase the contract price (whether a GMP, fixed price, lump sum or other price) established under the Last Reviewed Contract by more than ten percent (10%).

(c) An amendment to a Design-Build contract (as defined in OAR 137-049-0610), or an amendment to an Energy Savings Performance Contract (as defined in ORS 279A.010(1)(g)) that is in the construction phase, whether the amendment is in the form of a change order or a conventional amendment, if all of the following apply:

(A) The contract being amended was approved for legal sufficiency.

(B) The amendment is implemented in accordance with the provisions of the Design-Build or Energy Savings Performance Contract governing change orders and other types of amendments.

(C) The amendment modifies only one or both of the following and related payment obligations as necessary:

(i) The Statement of Work so as to require the Design/Builder or Energy Savings Performance Contract contractor, as applicable, to provide additional or fewer materials, tools, equipment, labor or professional or non-professional services within the general scope of the Last Reviewed Contract;

(ii) The substantial completion date, the final completion date, or interim milestone dates of the contract; Technical Specifications; time, place, quantity or form of delivery of materials, tools, equipment or services; or the price.

(D) The amendment does not increase the contract price (whether a GMP, fixed price, lump sum or other price) established under the Last Reviewed Contract by more than \$500,000 or five percent (5%), whichever is less.

(E) The amendment and all prior amendments subsequent to the Last Reviewed Contract in the aggregate do not increase the contract price (whether a GMP, fixed price, lump sum or other price) established under the Last Reviewed Contract by more than \$500,000 or ten percent (10%), whichever is less.

(d) For purposes of this rule, "change order" means a mutually agreed upon change order or a unilateral construction change directive or similar instruction issued by the Agency or its authorized representative to the contractor requiring a change in the work within the general scope of a Public Improvement Contract and issued under the provisions of the Public Improvement Contract governing the implementation, addition, reduction or other revisions to the work and, if applicable, adjusting the contract price or contract time for the changed work.

(4) Bonds and Confirmation Statements.

(a) A Public Contract entered into, issued or established in connection with the issuance of a bond or other borrowing of the State of Oregon, including an interest rate exchange agreement and any associated confirmation statement, if the Oregon State Treasurer has issued or authorized the bond or other borrowing obligation to which the Public Contract relates and if bond counsel appointed in accordance with applicable law has issued an approving opinion for the benefit or use of purchasers of the bond or other borrowing with respect to the enforceability of the bond or other borrowing upon closing of the transaction.

(b) A confirmation statement associated with an Agency's investment-related interest rate or currency swap agreement or other investment transaction, if the agreement under which the confirmation statement arises has been approved for legal sufficiency or is exempt from legal sufficiency approval.

(5) Employment Agreements. Employment agreements; collective bargaining agreements negotiated under applicable federal or state laws, including collective bargaining agreements entered into pursuant to ORS 410.612; or notices of appointment provided in accordance with OAR chapter 580, division 021. Agreements with third-party providers of temporary services are not exempt.

(6) Federal Contracts. A contract with a federal agency consisting substantially of provisions prescribed in Federal Acquisition Regulations or federal agency supplemental acquisition clauses (48 CFR), except a contract allowed under Section 211 of the federal E-Government Act of 2002.

(7) Federal Cooperative Agreements. A Federal Cooperative Agreement.

(8) Federal Grants. A grant from a federal agency under which an Agency is the grantee, provided that the Agency has a grants coordinator.

(9) Federal Pass-Through Grants. A grant under which an Agency passes through to another recipient all or a portion of the money or property received by the Agency under a grant from a federal agency, provided that:

(a) The Agency does not add to or modify the federal grant except as necessary to provide for proper administration; and

(b) The grant contains a clause substantially in the following form: "The recipient of grant funds, pursuant to this agreement with the State of Oregon, shall assume sole liability for recipient's breach of the conditions of the grant, and shall, upon recipient's breach of grant conditions that causes or requires the State of Oregon to return funds to the grantor, hold harmless and indemnify the State of Oregon for an amount equal to the funds which the State of Oregon is required to pay to grantor."

(10) Foster Care Agreements. An agreement between the Department of Human Services or the Oregon Youth Authority and a foster parent for the provision of foster care to an individual under the age of 21, or a youth placed with the Department of Human Services or Oregon Youth Authority pursuant to ORS 419C.478.

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(11) Home Care Services Agreements. An agreement for the provision of and payment for home care services as defined in ORS 410.600(6).

(12) Membership Agreements. A Public Contract that calls for the payment of dues or fees in consideration of membership of individual officers, employees or agents of the State of Oregon in a club, institution, or association in which the State of Oregon acquires no ownership interest.

(13) Non-Negotiable Public Contracts. A Non-Negotiable Public Contract.

(14) Prescribed Contracts. A Public Contract that is in the form prescribed in Procurement Documents and any conditions on authorization for release under OAR 137-045-0035. Prescribed Contracts do not vary from the form prescribed in Procurement Documents other than to fill in blanks in the form, as is commonly done with invitations to bid for goods and services other than personal services.

(15) Purchase Order Contracts. A Public Contract formed by a purchase order, work order or a similar ordering instrument for the purchase of goods or services under a Price Agreement, provided that the Price Agreement was approved by an Assistant Attorney General and the ordering instrument complies with any conditions of the approval.

(16) Settlement Agreements. Agreements settling disputed claims, provided that they do not have the effect of amending Public Contracts that are subject to the legal sufficiency approval requirement.

(17) Amendments to Loan Contracts. A written amendment to a Public Contract solely for an Agency loan of money to another party that requires repayment to the Agency, if all of the following apply:

(a) The Public Contract being amended was approved for legal sufficiency.

(b) The amendment modifies only:

(A) The description of the project being financed, but only to the extent that the modified project remains eligible for financing by the same source of funds as the project before modification; or

(B) Business terms in the Public Contract which:

(i) Except as provided in subsection (17)(c), do not increase or decrease the total principal repayment obligations under the Public Contract;

(ii) Change the interest rate or payment due dates, except for the final maturity date; or

(iii) Describe the non-financial terms and conditions of performance, such as performance start or completion dates for the project being financed or job creation or retention requirements.

(c) The aggregate increase in the loan amount under the amendment or the aggregate decrease in principal payments scheduled to be received by the Agency, and all prior amendments exempted from the legal sufficiency approval requirement subsequent to the Last Reviewed Contract, does not exceed the greater of:

(A) \$150,000; or

(B) Any particular amounts specified in writing at the time of approval by the Assistant Attorney General who provided legal sufficiency approval of the Last Reviewed Contract.

(18) Personal Services Contracts, Information Technology Contracts and Architectural and Engineering Services Contracts not calling for or providing for payment in excess of \$150,000.

(19) Technology Transfer and Related Agreements. Agreements that govern the transfer of tangible research materials between Oregon University System ("OUS") and another organization, agreements with a predominant purpose to grant a license to OUS intellectual property and related agreements. Related agreements are agreements to manage interests in OUS intellectual property, agreements to combine management of interests in OUS intellectual property with management of interests in intellectual property from other parties, agreements that transfer ownership of intellectual property between OUS and other parties, agreements governing revenue sharing from licensing, and confidentiality agreements regarding intellectual property.

(20) Public Contracts between the State of Oregon and Universities with Governing Boards. For the period beginning July 1, 2014, and ending September 30, 2014, Public Contracts between an Agency and the University of Oregon, Oregon State University, and Portland State University that were Interagency Agreements prior to July 1, 2014.

Stat. Auth.: ORS 291.047

Stats. Implemented: ORS 291.047(4)

Hist.: JD 4-1997(Temp), f. & cert. ef. 10-3-97; JD 5-1997(Temp), f. & cert. ef. 10-17-97; 137-045-0050(Temp) repealed by DOJ 3-1998, f. & cert. ef. 4-1-98; DOJ 3-1998, f. & cert. ef. 4-1-98; DOJ 2-2001, f. & cert. ef. 1-18-01; DOJ 17-2003, f. & cert. ef. 12-9-03; DOJ 19-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 18-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 2-2009(Temp), f. & cert. ef. 2-26-09 thru 8-25-09; DOJ 10-2009, f. 7-2-09, cert. ef. 7-6-09; DOJ 14-2009, f. 12-1-09, cert. ef. 1-1-10; DOJ 11-2014(Temp), f. & cert. ef. 7-11-14 thru 9-30-14

## Department of Oregon State Police, Office of State Fire Marshal Chapter 837

**Rule Caption:** Update code editions, clarification of language, and housekeeping changes.

**Adm. Order No.:** OSFM 3-2014

**Filed with Sec. of State:** 7-1-2014

**Certified to be Effective:** 7-1-14

**Notice Publication Date:** 5-1-2014

**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, 837-012-0505, 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, 837-012-0605, 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

**Rules Repealed:** 837-012-0930

**Subject:** These rules are being changed to update the adopted fire codes and standards editions, clarify existing language, and formatting updates.

**Rules Coordinator:** Valerie Abrahamson—(503) 934-8211

### 837-012-0305

#### Purpose and Scope

(1) These rules establish agricultural permit, permit application and other requirements for those persons permitted under ORS 480.122 and 480.124 to obtain agricultural permits to control birds and predatory animals that are injurious to crops.

(2) An agricultural permit allows the permit holder to engage only in those activities including the purchase, transportation, possession, storage and use of agricultural fireworks (1.4E) when those activities are otherwise in conformance with the requirements of ORS 480.122 and 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 agricultural fireworks unless they have applied for and obtained an agricultural 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.: ORS 480.122 & 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

### 837-012-0310

#### Agricultural Permit Applications

(1) Any person engaged in, or intending to engage in, the use of agricultural fireworks must apply for and obtain an agricultural 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 agricultural fireworks upon determining the proposed purchase or use is not in accordance with these rules or applicable statutes. A separate agricultural permit must be applied for and obtained for each person who desires to use agricultural fireworks.

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(3) The permit application for an agricultural 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 agricultural permit applicant's knowledge.

(5) As part of the permit application process, the applicant must obtain the signature of either the state game management or federal game management authority on the permit application.

(6) The applicant must obtain the signature of the game management authority prior to submitting the permit application to the Office of State Fire Marshal.

(7) Permit applications that do not contain the signature required in OAR 837-012-0360(5) will not be approved, and will be returned to the applicant.

(8) The Office of State Fire Marshal may grant or deny permit applications within 10 days following receipt of a properly completed and submitted permit application.

Stat. Auth.: ORS 480.122 & 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

## 837-012-0315

### Definitions

(1) "Agent" means an individual designated by the permit holder to pick up the agricultural fireworks authorized by the agricultural permit from an Oregon licensed wholesaler when the permit holder is unable to pick up the agricultural fireworks. The agent must have the agricultural permit (or a copy) issued by the State Fire Marshal in their possession at the time the agricultural fireworks are picked up from the wholesaler.

(2) "Agricultural 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 which are or may injure forest or agricultural products or crops, allowed by ORS 480.122,

(e) Fireworks referred to as explosive pest control devices,

(f) Fireworks not including retail fireworks, display fireworks, or exempt fireworks.

(3) "Agricultural Permit" means the official written document issued by the Office of State Fire Marshal pursuant to ORS 480.122 and 480.124 and OAR 837-012-0305 through 837-012-0370 granting permission to a person to purchase and use agricultural fireworks.

(4) "Agricultural Crop" means a plant or animal or plant or animal product that can be grown or harvested extensively for profit or subsistence.

(5) "Agricultural Product" means a product that is naturally grown and brings a profit.

(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) "Illegal Fireworks" has the meaning provided in OAR 837-012-0610.

(9) "Individual" means a real, actual person.

(10) "Individual Member of the General Public" means any person who has not been issued a wholesale permit, a general, limited or special effects public display permit, a retail permit or an agricultural permit by the Office of State Fire Marshal.

(11) "Local Fire Authority" means the local fire authority having jurisdiction over the agricultural fireworks use and storage sites.

(12) "May" means a regulation of conduct and implies probability or permission.

(13) "May not" means a prohibition of conduct.

(14) "Must" means a mandatory requirement.

(15) "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 agricultural permit.

(16) "Permit Holder" means the person referred to in ORS 480.122 who:

(a) Desires to purchase, maintain, use, and explode agricultural fireworks for the purpose of scaring away or repelling birds or animals which are or may be injurious or destructive to forest or agricultural products or crops,

(b) Has applied to the State Fire Marshal for an agricultural permit;

(c) The State Fire Marshal has issued an agricultural permit referred to in ORS 480.122;

(d) Is responsible for any activities conducted under the agricultural permit.

(17) "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.

(18) "Sell" means to transfer possession of property from one person to another person for consideration.

(19) "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 agricultural fireworks.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 480.122 & 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

## 837-012-0320

### Storage of Agriculture Fireworks

Agricultural fireworks must be stored in accordance with the requirements of these rules, the Oregon Fire Code 2014 Edition and the Oregon Structural Specialty Code 2014 Edition.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 480.122 & 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

## 837-012-0325

### Permits-Denial, Suspension, Revocation

(1) The State Fire Marshal may deny, suspend or revoke an agricultural permit for violation of ORS 480.111 through 480.165 and OAR chapter 837, division 12. 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 agricultural 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 an agricultural permit may include suspension or revocation of the current permit and the right to apply for a subsequent permit.

Stat. Auth.: ORS 480.122 & 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

## 837-012-0330

### General

(1) Agricultural 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.

(2) Agricultural permit holders must notify the Office of State Fire Marshal, in writing, within 24 hours of the date of change, of:

(a) The agricultural permit holder's mailing address, telephone number,

# ADMINISTRATIVE RULES

(b) The storage address of the agricultural fireworks.

(3) Change of the storage location of the agricultural fireworks is subject to prior written approval by the local fire authority and the Office of State Fire Marshal.

(4) Agricultural 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, 2014 Edition; and
- (d) Oregon Structural Specialty Code, 2014 Edition.

(5) Agricultural permit holders must purchase agricultural 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.

(6) Agricultural permit holders may request a duplicate copy of their agricultural permit by certifying to the Office of State Fire Marshal, in writing, their agricultural permit has been lost, stolen, or destroyed. Written requests must be signed and dated by the agricultural permit holder.

(7) The issuance of an agricultural permit does not in any way constitute approval by the Office of State Fire Marshal of any agricultural fireworks purchased, sold, or provided pursuant to the agricultural permit.

(8) An agricultural permit allows the permit holder to engage in the purchase, transportation, possession, storage and use of agricultural 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.

(9) An agricultural 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 agricultural fireworks by or to any person other than the agricultural permit holder.

(10) Any agricultural 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.

(11) Individuals firing agricultural fireworks must be a minimum of 18 years of age.

(12) Only the agricultural permit holder, and any employees of the agricultural permit holder, may engage in activities authorized by the agricultural permit.

(13) Agricultural permits, and the rights conveyed by the agricultural permit, are not transferable.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 480.122 & 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

## 837-012-0340

### Permit Fees

There are no fees for this application.

Stat. Auth.: ORS 480.122

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

## 837-012-0350

### Issuance of Agricultural Permits

(1) Each agricultural permit is assigned a unique number by the Office of State Fire Marshal.

(2) Only one agricultural permit is required for each agricultural location. A permit application may contain multiple use locations provided each location is owned, leased, or used by the permit holder, and located within the same fire district.

(3) The agricultural permit is valid only for the location of use listed on the agricultural permit.

(4) The agricultural permit will be mailed to the permit holder at the mailing address listed on the permit application.

(5) An initial agricultural 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.

(6) Upon renewal, agricultural permits are valid for a period not to exceed three years.

Stat. Auth.: ORS 480.122

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

## 837-012-0360

### Purchase of Agricultural Fireworks

(1) Permit holders must be 18 years of age or older.

(2) Agricultural permit holders may purchase or otherwise obtain agricultural 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 agricultural fireworks to the permit holder under the following criteria:

(a) Agricultural permit holders may only obtain agricultural fireworks listed on their agricultural fireworks permit.

(b) The state game management or federal game management authority who supplies agricultural fireworks must maintain a record of all agricultural 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 agricultural fireworks must be in conformance with their specific agency policies and procedures for the distribution of agricultural fireworks.

(3) Once an agricultural permit has been issued and the wholesaler selected; if an agricultural permit holder desires to obtain agricultural fireworks from another wholesaler, the agricultural permit holder must notify the Office of State Fire Marshal at least 24 hours prior to purchasing the agricultural fireworks from another licensed agricultural fireworks wholesaler.

Stat. Auth.: ORS 480.122

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

## 837-012-0370

### Prohibited Acts and Limitations

(1) An agricultural permit does not allow the permit holder to purchase, possess, or sell any other types of fireworks.

(2) Agricultural fireworks may not be utilized for any purpose other than the use as stated on the permit application.

(3) Agricultural fireworks utilized for any other use than the permitted use may result in the immediate suspension of the agricultural permit and confiscation of the unused agricultural fireworks.

(4) A permit holder may not sell or provide by any other means agricultural fireworks or any other fireworks to any other person including other permit holders.

(5) The agricultural permit does not authorize the manufacture, sale, use, discharge or possession of agricultural fireworks in any city or county where agricultural 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 agricultural fireworks are stored, transported, or used.

(7) Permit holders may not provide agricultural fireworks to anyone other than an authorized employee or owner of the permit holder's business for the purpose specified on the permit applications.

Stat. Auth.: ORS 480.122

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

## 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 Agricultural 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

## 837-012-0505

### Effective Dates

OAR 837-12-500 through 837-012-0570 are effective July 1, 2014.

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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

## 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) "Agricultural Fireworks" means Fireworks used for the purpose of scaring away or repelling birds or animals pursuant to ORS 480.122 or controlling predatory animals pursuant to 480.124.

(2) "BATFE" means the Bureau of Alcohol, Tobacco, Firearms and Explosives.

(3) "Carton, Container, or Case" means any box, parcel, bundle, or other package used to hold or contain Fireworks, Retail Fireworks, Display Fireworks, or Agricultural 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 Agricultural Fireworks; or

(b) A vehicle or other mobile container used to transport Fireworks, Retail Fireworks, Display Fireworks, or Agricultural Fireworks.

(4) "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.

(5) "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.

(6) "Exempt Fireworks" has the meaning provided in ORS 480.111(5).

(7) "Fireworks" has the meaning provided in ORS 480.111(7).

(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) "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 an agricultural 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 Agricultural Fireworks.

(11) "In-state Wholesaler" means a Wholesaler who owns, possesses, or occupies a Wholesale Site located in Oregon.

(12) "Local Fire Authority" means the local fire official having jurisdiction over the Wholesale Site and Wholesale Operations.

(13) "Manager" means the Individual identified on the Permit Application who is responsible for and directs the operations at the Wholesale Site.

(14) "Manufacture" has the meaning provided in ORS 480.111(13).

(15) "NFPA" means the National Fire Protection Association.

(16) "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.

(17) "Out-of-State Wholesaler" means a Wholesaler who owns, occupies, or possesses a Wholesale Site located outside of Oregon.

(18) "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.

(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 Agricultural 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 Agricultural 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 Agricultural 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

## 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) Agricultural fireworks permit for scaring away birds or animals injurious to crops.

(5) Wholesalers desiring to engage in any Fireworks activities, including retail sales, agricultural 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.

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(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

## 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 Agricultural 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 Agricultural 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 Site 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 Agricultural 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 BATF 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; 2014 Edition,

(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 preceding 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

## 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

# ADMINISTRATIVE RULES

Fireworks, Display Fireworks, or Agricultural 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 Agricultural 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 Agricultural 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) Agricultural use permits.

(9) A Wholesale Permit does not authorize the sale or provision by any other means, of Fireworks, Retail Fireworks, Display Fireworks, or Agricultural 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 Permits 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 is 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 Agricultural 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 Agricultural Fireworks must show on the outside of each Carton, Container or Case, 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 Agricultural Fireworks are being provided.

(a) If the Fireworks, Retail Fireworks, Display Fireworks, or Agricultural 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 Agricultural 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 Agricultural 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

## 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 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. If the fee is paid by either personal or business check, the Office of State Fire Marshal may not take any action on the Permit Application until the check has cleared the bank.

(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

## 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

## 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, the Edition as published in August 2012 (The separation distances must be met as required by NFPA 1124, the Edition as published in August 2012. All Fireworks stored at the Wholesale Site must be considered in calculating the separation distances);

(b) NFPA 68, Guide for Explosion Venting, 2014 Edition;

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(c) Oregon Structural Specialty Code, 2014 Edition;

(d) Oregon Fire Code, 2014 Edition;

**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 Fireworks, Retail Fireworks, Display Fireworks, or Agricultural Fireworks may not be allowed within 100 feet of the storage or sales facilities.

[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

## 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) Fireworks, Retail Fireworks, Display Fireworks, or Agricultural 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 Fireworks, Retail Fireworks, Display Fireworks, or Agricultural 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 P5400.4. Sales or provision of Fireworks, Retail Fireworks, Display Fireworks, or Agricultural 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 Agricultural 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 Agricultural 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 Fireworks, Retail Fireworks, Display Fireworks, or Agricultural 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 Agricultural 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 Fireworks, Retail Fireworks, Display Fireworks, or Agricultural 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

## 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 Fireworks, Retail Fireworks, Display Fireworks or Agricultural 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 Agricultural Fireworks are to be sold or provided resides and the laws of the state where the Fireworks, Retail Fireworks, Display Fireworks, or Agricultural Fireworks are to be transported or shipped, if the Fireworks, Retail Fireworks, Display Fireworks, or Agricultural 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 Agricultural 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 Agricultural 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 Agricultural Fireworks may not be sold or otherwise provided to out-of-state Residents whose state of Residence prohibits the sale, provision, purchase, possession, or use of Fireworks, Retail Fireworks, Display Fireworks, or Agricultural 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

## 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 Agricultural 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 Agricultural Fireworks to any Individual under 18 years of age if the sale or provision of Retail Fireworks or Agricultural Fireworks is to an Individual in Oregon;

(c) Fireworks, Retail Fireworks, Display Fireworks or Agricultural Fireworks to any Person who does not possess a valid permit for such Fireworks, Retail Fireworks, Display Fireworks, or Agricultural 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 Agricultural Fireworks;

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(d) Fireworks, Retail Fireworks, Display Fireworks or Agricultural 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 Fireworks 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 Agricultural 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 agricultural use 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 Agricultural 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 Agricultural 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 Agricultural 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 Agricultural 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

## 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 Agricultural 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 Agricultural 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 Agricultural Fireworks be:

(a) Returned to the manufacturer of the Fireworks, Retail Fireworks, Display Fireworks, or Agricultural 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 Agricultural 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

## 837-012-0565

### Transportation

(1) All shipments of Fireworks, Retail Fireworks, Display Fireworks, or Agricultural 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 Agricultural 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 Agricultural Fireworks to any Person for transport when the permit holder knows or should know that the Person cannot or will not transport such Fireworks, Retail Fireworks, Display Fireworks, or Agricultural 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 Agricultural 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 Agricultural 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

## 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

## 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

## 837-012-0605

### Effective Dates

OAR 837-012-0600 through 837-012-0675 are effective July 1, 2014.

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 14-2000, f. & cert. ef. 12-4-00; OSFM 3-2014, f. & cert. ef. 7-1-14

# ADMINISTRATIVE RULES

## 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) "Agricultural Fireworks" means Fireworks used for the purpose of scaring away or repelling birds or animals pursuant to ORS 480.122 or controlling predatory animals pursuant to ORS 480.124.

(2) "BATFE" means the Bureau of Alcohol, Tobacco, Firearms and Explosives.

(3) "Building" has the same meaning provided in the Oregon Structural Specialty Code, 2014 Edition. The term does not include a Tent, Canopy, Stand or trailer.

(4) "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.

(5) "Carton, Container, or Case" means any box, parcel, bundle, or other package used to hold or contain Fireworks, Retail Fireworks, Display Fireworks, or Agricultural 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 Agricultural Fireworks; or

(b) A vehicle or other mobile container used to transport Fireworks, Retail Fireworks, Display Fireworks, or Agricultural Fireworks.

(6) "Combination Item" means a consumer fireworks device that contains combinations of two or more effects.

(7) "Cone Fountain" has the meaning provided in ORS 480.111(1).

(8) "Consumer Fireworks" has the meaning provided in ORS 480.111(2).

(9) "Cylindrical Fountain" has the meaning provided in ORS 480.111(3).

(10) "Display Fireworks" has the meaning provided in ORS 480.111(4).

(11) "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.

(12) "Exempt Fireworks" has the meaning provided in ORS 480.111(5).

(13) "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, 2014 Edition. The term may include a check stand Exit.

(14) "Explosive mixture" has the meaning provided in ORS 480.111(6).

(15) "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.

(16) "Fireworks" has the meaning provided in ORS 480.111(7).

(17) "Flitter Sparkler" has the meaning provided in ORS 480.111(9).

(18) "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.

(19) "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.

(20) "Illuminating Torch" has the meaning provided in ORS 480.111(11).

(21) "Individual" means a single human being.

(22) "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 agricultural permit by the Office of State Fire Marshal.

(23) "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.

(24) "Indoor Sales" means sales of Retail Fireworks from inside a Building or Tent.

(25) "Local Fire Authority" means the local fire official having jurisdiction over the Retail Site or the Retail Fireworks storage location.

(26) "NFPA" means the National Fire Protection Association.

(27) "Novelties and Trick Noisemakers" means those items described in the American Pyrotechnics Association Standard 87-1. It also means Exempt Fireworks.

(28) "Outdoor Sales" means sales of Retail Fireworks from a Tent, Canopy, Stand or trailer.

(29) "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.

(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 Sales 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 Sales 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, Public Display Fireworks, or Agricultural 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

## 837-012-0615

### General

(1) Retailers desiring to engage in other types of Fireworks activities, including wholesale sales, public displays or agricultural 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, 2014 Edition; and

(d) Oregon Structural Specialty Code, 2014 Edition.

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(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

## 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 Sales 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

## 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. If the fee is paid by either personal or business check, the Office of State Fire Marshal will not take any action on the Permit Application until the check has cleared the bank.

(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

## 837-012-0630

### Issuance of Retail Permits

(1) The Office of State Fire Marshal may not issue 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 per-

# ADMINISTRATIVE RULES

mit 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 Permits, 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 Permits 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

## 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

## 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 Outlets 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

## 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.

# ADMINISTRATIVE RULES

(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, 2014 Edition; and
- (d) Oregon Fire Code, 2014 Edition.

(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, 2014 Edition; 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

## 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 near-by 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 Outlet. 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 Outlets, 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 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 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

## 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

# ADMINISTRATIVE RULES

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

## 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 Firework 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

## 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

## 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 Member of the General Public under 16 years of age;

(b) Illegal Fireworks to any Individual Member 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 Wholesale 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

## 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. ef. 12-4-00; OSFM 11-2001, f. & cert. ef. 12-14-01; OSFM 3-2014, f. & cert. ef. 7-1-14

## 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 Display Operators and requirements for Fireworks Display 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

## 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

## 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.

## ADMINISTRATIVE RULES

(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) "Agricultural Fireworks" means Fireworks used for the purpose of scaring away or repelling birds or animals pursuant to ORS 480.122 or controlling predatory animals pursuant to 480.124.

(4) "Approved Applicant" means any Individual that meets the requirements of OAR chapter 837, division 12.

(5) "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.

(6) "Barge" means a floating vessel or a floating platform.

(7) "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.

(8) "Black Match" means fuse made from string impregnated with black powder and used for igniting Fireworks devices.

(9) "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).

(10) "Burst" means Break.

(11) "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.

(12) "Cake Device" means Multi-shot Device.

(13) "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.

(14) "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.

(15) "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.

(16) "Discharge Site" means the area immediately surrounding the area where Fireworks are ignited for an outdoor Display.

(17) "Display" means an outdoor General or Limited Fireworks Display or an indoor or outdoor Fireworks Display using Special Effects Fireworks.

(18) "Display Fireworks" has the meaning provided in ORS 480.111(4).

(19) "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.

(20) "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.

(21) "Dud" means a Firework that leaves the mortar and returns to earth without producing the intended Break or effect.

(22) "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.

(23) "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.

(24) "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.

(25) "Exempt Fireworks" has the meaning provided in ORS 480.111(5).

(26) "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.

(27) "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.

(28) "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.

(29) "Fireworks" has the meaning provided in ORS 480.111(7).

(30) "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.

(31) "Fireworks Display" has the meaning provided in ORS 480.111(8).

(32) "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.

(33) "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.

(34) "Fusee" means a highway distress flare, sometimes used to ignite Fireworks at outdoor Displays.

(35) "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.

(36) "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.

(37) "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.

(38) "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.

(39) "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".

(40) "Individual" means a single human being.

(41) "Individual Member of the General Public" means any Person who has not been issued a Wholesale Permit, a Display Permit, a Retail Permit or an Agricultural Permit by the Office of State Fire Marshal.

(42) "Instructor" means the Individual who delivers the training required under OAR 837-012-0780.

(43) "Lance" means a thin cardboard tube packed with a color producing pyrotechnic composition and used to construct Ground Display Pieces.

(44) "Law Enforcement Authority" means any law enforcement official having jurisdiction over the Fireworks Display Site.

(45) "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.

(46) "Lift Charge" means composition in an Aerial Shell that propels the Aerial Fireworks into the air when ignited.

(47) "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.

(48) "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.

(49) "Limited Display Permit" means a Permit to hold a Display using 1.4g Fireworks labeled UN0336.

(50) "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.

(51) "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.

# ADMINISTRATIVE RULES

(52) "Local government" has the meaning provided in ORS 480.111(12).

(53) "Low Break" means an Aerial Shell that functions significantly lower than its prescribed height.

(54) "Manual Firing" means using a handheld ignition source such as a Fusee or Portfire to ignite Fireworks.

(55) "Manufacture" has the meaning provided in ORS 480.111(13).

(56) "May" means a regulation of conduct and implies probability or permission.

(57) "May not" means a prohibition of conduct.

(58) "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.

(59) "Misfire" means a Firework fails to function after an ignition source is applied to the ignition point.

(60) "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.

(61) "Mortar" means a tube, closed at one end, from which Aerial Fireworks are fired into the air.

(62) "Mortar Rack" means a frame containing Mortars and are most often used for Barrages and Finales and in electrically ignited General Fireworks Displays.

(63) "Mortar Trough" means an aboveground structure filled with sand or similar materials in which Mortars are positioned for use in General Fireworks Displays.

(64) "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.

(65) "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.

(66) "Must" means a mandatory requirement.

(67) "Muzzle Break" means an Aerial Shell that Bursts immediately as it leaves the Mortar.

(68) "Operator" means the Individual qualified as set forth in OAR 837-012-0780 to conduct the Display.

(69) "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.

(70) "Peanut Shell" means two or more Aerial Shells in a common wrapper propelled by the same lift charge with separate external time fuses.

(71) "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.

(72) "Permit Holder" means the Person as listed on the Display Permit as the Person to whom the Permit is issued.

(73) "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.

(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, that 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 Agricultural 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

## 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 agricultural use, must meet all applicable requirements in ORS 480.111 to 480.165 and OAR chapter 837, division 12, including those requiring Permits to be obtained from local, state, and federal authorities.

(4) Display Permit Holders May purchase Fireworks only from Wholesalers having the necessary and current Permits 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

# ADMINISTRATIVE RULES

## 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. Permits 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

## 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. If the fee is paid by either personal or business check, the Office of State Fire Marshal May not take any action on the Display Permit Application until the check has cleared the bank.

(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

## 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

## 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

# ADMINISTRATIVE RULES

## 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. ef. 6-20-02; OSFM 3-2003, f. & cert. ef. 2-10-03; OSFM 3-2014, f. & cert. ef. 7-1-14

## 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 Display.

(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. ef. 6-20-02; OSFM 3-2003, f. & cert. ef. 7-1-14

## 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. ef. 6-20-02; OSFM 3-2014, f. & cert. ef. 7-1-14

## 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. ef. 6-20-02; OSFM 3-2003, f. & cert. ef. 2-10-03; OSFM 3-2014, f. & cert. ef. 7-1-14

## 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. ef. 6-20-02; OSFM 3-2003, f. & cert. ef. 2-10-03; OSFM 3-2014, f. & cert. ef. 7-1-14

## 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:

# ADMINISTRATIVE RULES

(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. ef. 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

## 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, Container or Case 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, 2014 Edition.

(c) Oregon Structural Specialty Code, 2014 Edition.

(d) NFPA 1124, Code for the Manufacture, Transportation and Storage of Fireworks as published in August 2012; 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 as published in August 2012; 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 Site 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 as published in August 2012.

[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. ef. 6-20-02; OSFM 3-2003, f. & cert. ef. 2-10-03; OSFM 3-2014, f. & cert. ef. 7-1-14

## 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.

# ADMINISTRATIVE RULES

(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 Site 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 that the trajectory 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 Permits that authorize only Retail Fireworks May not be subject to the 140 foot separation requirement. Separation requirements for Limited Display Permits 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

## 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 re-located 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

# ADMINISTRATIVE RULES

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-Ohm 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

## 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

## 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

# ADMINISTRATIVE RULES

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. ef. 6-20-02; OSFM 3-2003, f. & cert. ef. 2-10-03; OSFM 3-2014, f. & cert. ef. 7-1-14

## 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. ef. 6-20-02; OSFM 3-2003, f. & cert. ef. 2-10-03; OSFM 3-2014, f. & cert. ef. 7-1-14

## 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

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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

## 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

## 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

## 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

## 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 2014 Edition, Oregon Structural Specialty Code 2014 Edition, and NFPA 1124 Manufacture, Transportation, and Storage of Fireworks and Pyrotechnic Articles as published in August 2012, 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

## 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.

(9) Displays May not be conducted in the event the Office of State Fire Marshal or fire authority has invoked a burning ban. If the Display Site is a large body of water or close proximity indoor event, and in the opinion of the Local Fire Authority and the State Fire Marshal the Display presents no more fire hazard than at other times, the Permit May be issued.

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

## 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.

# ADMINISTRATIVE RULES

(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

## 837-012-0940

### Civil and Criminal Enforcement Actions

(1) In addition to denying, revoking or suspending Permits 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

## 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

## 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

## 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

## 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, agricultural 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

## 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

## 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

# ADMINISTRATIVE RULES

## 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 hearing 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 agricultural 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 agricultural 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

## 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 Persons 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.

Stat. Auth.: ORS 183.090 & 480.110 - 480.165

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

## 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

## 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

## 837-012-1070

### Hearings

(1) Any Person may request a hearing regarding the assessment of a civil penalty.

# ADMINISTRATIVE RULES

(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

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

## 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

## 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.

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

## 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

## 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

## 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

## 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

## 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;

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- (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

## 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

## 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 public 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

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**Rule Caption:** Adopt, by reference, the Hazardous Substance Possession Fee schedules effective July 1, 2014

**Adm. Order No.:** OSFM 4-2014

**Filed with Sec. of State:** 7-1-2014

**Certified to be Effective:** 7-1-14

**Notice Publication Date:** 5-1-2014

**Rules Amended:** 837-090-1030

**Subject:** Fee schedules are established by Office of State Fire Marshal for any person possessing a hazardous substance at a facility in

this state. This rule amendment adopts, by reference, the Hazardous Substance Possession Fee schedule effective July 1, 2014.

**Rules Coordinator:** Valerie Abrahamson—(503) 934-8211

## 837-090-1030

### State Fee Schedules

(1) Three state fee schedules shall be developed annually as the basis for assessing each person returning Hazardous Substance Information Survey (see OAR 837-090-1000 to 837-090-1045) a Hazardous Substance Possession Fee.

(2) The annual fee assessed under each schedule shall be based upon the single largest maximum aggregate quantity of substance reported in the Hazardous Substance Information Survey, that is manufactured, stored, or otherwise possessed by a facility during the survey year.

(3) The programs to be funded from fees collected under ORS 453.396 to 453.414 and these rules, and the range of the fee schedules that may be considered, beginning July 1989, are as follows:

(a) For funding the Community Right to Know and Protection Act, not less than \$25 and not more than \$2,000 per facility;

(b) For funding the Toxics Use Reduction and Hazardous Waste Reduction Act, not less than \$25 and not more than \$2,000 per facility;

(c) For each employer's share of a total of up to \$1 million to be deposited into the Orphan Site Account established under ORS 465.381, not less than zero and not more than \$9,000 per facility. This schedule shall not require an employer to pay a total more than \$25,000 for all facilities.

(4) Employers that believe a billing error has occurred may request a fee review. Fee review requests must be made in writing to the Office of State Fire Marshal within 20 days of the billing mail date. Fee review requests must include the company name, facility ID number, site address, name of the substance the fee was based on, amount of the fee assessed, telephone number and the reason for requesting a review.

(5) Any dispute as to the amount or validity of a hazardous substance fee assessment shall be resolved in accordance with the appeals process procedures outlined in the Administrative Procedures Act (APA), ORS 183.025 to 183.725, unless specifically addressed in these rules.

(6) The Office of State Fire Marshal adopts by reference the Hazardous Substance Possession Fee schedules effective July 1, 2014. Copies of these fee schedules are available for review at the central office of the State Fire Marshal during normal business hours or online at <http://www.oregon.gov/OSP/SFM/Pages/index.aspx>

(7) If a person can provide evidence that all or part of their propane is derived from the refining of crude oil, the fee assessment Reporting Quantity Range and the fee shall be adjusted accordingly;

(8) If a person can provide evidence that all or part of their propane is used to power motor vehicles licensed for public highway use, the fee assessment Reporting Quantity Range and the fee shall be adjusted accordingly.

Stat. Auth.: ORS 453.408, 833 & 1071  
Stats. Implemented: ORS 453.402  
Hist.: FM 4-1989, f. & cert. ef. 8-31-89; FM 7-1990(Temp), f. & cert. ef. 11-15-90; FM 3-1991(Temp), f. & cert. ef. 12-23-91; FM 7-1992, f. 6-15-92, cert. ef. 7-15-92, Renumbered from 837-090-0900; FM 9-1992(Temp), f. & cert. ef. 9-28-92; OSFM 9-2002, f. 11-14-02, cert. ef. 11-17-02; OSFM 2-2013, f. 6-26-13, cert. ef. 7-1-13; OSFM 4-2014, f. & cert. ef. 7-1-14

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## Department of Public Safety Standards and Training Chapter 259

**Rule Caption:** Extend the application date on the intermediate and advanced certification chart.

**Adm. Order No.:** DPSST 12-2014

**Filed with Sec. of State:** 6-24-2014

**Certified to be Effective:** 6-24-14

**Notice Publication Date:** 6-1-2014

**Rules Amended:** 259-008-0060

**Subject:** A multi-disciplined workgroup was formed in 2007 to evaluate DPSST's Intermediate and Advanced certification charts. The mission of the workgroup was to review the charts and update the minimum standards for achieving upper levels of certification in the criminal justice profession. The workgroup was comprised of management and represented staff from each of the four disciplines; police, corrections, parole and probation, and telecommunications.

From 2007 to 2012, the workgroup met to develop updated charts that addressed the needs of both the profession and public safety personnel. This was a lengthy process that involved the Board, all the

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Policy Committees, the OSSA, OACP, APCO/NENA, and OACCD. The workgroup developed two charts; one that applied to police, corrections, and parole and probation and one that applied to telecommunications.

The new certification charts were approved by all involved entities and became effective November 1, 2012; however, a stipulation was added to rule that allowed public safety professionals to apply for intermediate or advanced certification under either the old or new certification system until October 31, 2014.

A number of constituents expressed frustration with the new application process for intermediate and advanced certification. To alleviate these frustrations, DPSST is reevaluating the manner the applications are processed internally. Current rule allows officers to apply under either the old chart or the new chart until October 31, 2014. This rule change extends this deadline to October 31, 2015, to allow time to refine the application process.

**Rules Coordinator:** Sharon Huck—(503) 378-2432

## 259-008-0060

### Public Safety Officer Certification

(1) Basic, Intermediate, Advanced, Supervisory, Management, and Executive Certificates are awarded by the Department to law enforcement officers and telecommunicators meeting prescribed standards of training, education, experience; and the levels established by the employing law enforcement units, or public or private safety agencies. Emergency medical dispatchers may be awarded basic certification only.

(2) Basic certification is mandatory and must be acquired by all police officers, parole and probation officers, telecommunicators, and emergency medical dispatchers within 18 months of employment, and by all corrections officers within one year of employment unless an extension is granted by the Department.

(3) To be eligible for the award of a certificate, law enforcement officers must be full-time employees as defined by ORS 181.610 and OAR 259-008-0005 or part-time parole and probation officers, as described in ORS 181.610 and OAR 259-008-0066.

(4) To be eligible for the award of a certificate, law enforcement officers must meet the Board's prescribed minimum employment standards as established by OAR 259-008-0010.

(5) To be eligible for the award of a certificate, telecommunicators must meet the Board's prescribed minimum employment standards as established by OAR 259-008-0011.

(6) To be eligible for the award of a certificate, law enforcement officers must subscribe to and swear or affirm to abide by the Criminal Justice Code of Ethics (Form F11). Telecommunicators and emergency medical dispatchers must subscribe to and swear or affirm to abide by the Telecommunicator Code of Ethics (Form F-11T).

(7) Application for certification must be submitted on Form F7 (Application for Certification), with all applicable sections of the form completed. The form must be signed by the applicant. In order to ensure that the applicant meets the minimum standards of employment, training, education, and experience, and is competent to hold the level of certification for which the applicant has applied, the department head or authorized representative must sign the form recommending that the certificate be issued or withheld. If the department head chooses not to recommend the applicant's request for certification, the reason for this decision must be specified in writing and must accompany the Form F7.

(8) 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.

(9) In addition to the requirements set forth above, each applicant must have completed the designated education and training, combined with the prescribed corrections, parole and probation, police 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 (1) education credit.

(b) Each semester credit unit granted by an accredited college or university operating on a semester schedule will equal one and one half (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.

(10) Training:

(a) Basic courses certified by the Department shall 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 paragraph (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.

(11) Experience/Employment:

(a) Experience gained as a corrections, parole and probation, or police officer employed full time with municipal, county, state, or federal agencies, may be accepted if the experience is in the field in which certification is requested and is approved by the Department. 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. A public safety officer may submit a written request for credit for military time served upon return from his or her military duty. The Department will evaluate each written request to determine whether an individual is eligible for any credit for time served;

(C) From the date a public safety officer's certification is suspended until it is reinstated by the Department; or

(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.

(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 field in which 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) Police, corrections, parole and probation, telecommunicator, or emergency medical dispatch experience in fields other than that in which certification is requested may receive partial credit when supported by job descriptions or other documentary evidence. In all cases, experience claimed is subject to evaluation and approval by the Department.

(12) The Basic Certificate. In addition to the requirements set forth in section (1) of this rule, the following are required for the award of the Basic Certificate:

(a) Applicants must have completed a period of service of not less than nine (9) months with one or more law enforcement units or public or private safety agencies in a certifiable position in the field in which certification is being requested;

(b) Applicants must have satisfactorily completed the required Basic Course in the field in which certification is requested or have completed equivalent training as determined by the Department; and

(c) Applicants must have valid first aid and cardiopulmonary resuscitation (CPR) cards.

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(13) The Intermediate Certificate. In addition to the requirements set forth in section (1) of this rule, the following are required for the award of the Intermediate Certificate:

(a) Applicants must possess a Basic Certificate in the field in which certification is requested; and

(b) Applicants must have acquired the combinations of education hours and training hours combined with the prescribed years of police, corrections, parole and probation or telecommunications experience, or the college degree designated combined with the prescribed years of experience as identified on the chart effective through October 31, 2012: [Table not included. See ED. NOTE.]

(14) Effective November 1, 2012:

(a) Applicants for an Intermediate Certificate in police, corrections or parole and probation must have acquired the combinations of education hours and training hours combined with the prescribed years of experience, or college degree designated combined with the prescribed years of experience as identified on the chart effective November 1, 2012: [Table not included. See ED. NOTE.]

(b) Applicants for an Intermediate Certificate in telecommunications must have acquired the following combinations of education hours, training hours, prescribed years of telecommunications experience, and competency as identified on the chart effective November 1, 2012: [Table not included. See ED. NOTE.]

(c) The years experience must be full-time employment within the discipline for which Intermediate certification is being applied.

(d) The training hours originating from a single training event that are used to meet the training hour requirement for Intermediate certification cannot be applied towards future levels of certification.

(e) 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 designee on an F-7 Application for Certification at the Intermediate level represents the agency's attestation that the applicant is performing at a level of competence expected at that certification level.

(15) Applicants for Intermediate certification may apply by satisfying the requirements described in subsection (13) or the requirements described in subsection (14) through October 31, 2015.

(16) The Advanced Certificate. In addition to the requirements set forth in section (1) 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 field in which certification is requested; and

(b) Applicants must have acquired the combinations of education and training hours combined with the prescribed years of corrections, parole and probation, police, telecommunications experience, or the college degree designated combined with the prescribed years of experience as identified on the chart effective through October 31, 2012: [Table not included. See ED. NOTE.]

(17) Effective November 1, 2012:

(a) Applicants for an Advanced Certificate in police, corrections or parole and probation must have acquired the following combinations of education and training hours combined with the prescribed years of experience, or the college degree designated combined with the prescribed years of experience as identified on the chart effective November 1, 2012: [Table not included. See ED. NOTE.]

(b) Applicants for an Advanced Certificate in telecommunications must have acquired the following combinations of education hours, training hours, prescribed years of telecommunications experience, and competency as identified on the chart effective November 1, 2012: [Table not included. See ED. NOTE.]

(c) The years of experience must be full-time employment within the discipline for which Advanced certification is being applied.

(d) The training hours originating from a single training event that are used to meet the training hour requirement for Advanced certification cannot be applied towards future levels of certification.

(e) 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 designee on an F-7 Application for Certification at the Advanced level represents the agency's attestation that the applicant is performing at a level of competence expected at that certification level.

(18) Applicants for Advanced certification may apply by satisfying the requirements described in subsection (16) or the requirements described in subsection (17) through October 31, 2015.

(19) The Supervisory Certificate. In addition to requirements set forth in section (1) 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 field in which certification is requested;

(b) Applicants must have satisfactorily completed no less than 45 education credits as defined in section (10) of this rule;

(c) Applicants must have satisfactorily completed the prescribed Supervision training within five (5) years prior to application for the Supervisory Certificate; and

(d) Applicants must be presently employed in, or have satisfactorily performed the duties associated with, the position of a first-level supervisor as defined in OAR 259-008-0005 and as attested to by the applicant's department head during the time such duties were performed for a period of one (1) year. The required experience must have been acquired within five (5) years prior to the date of application.

(e) Upon request of the employing agency, the Department may waive the requirements of subsection (c) or (d) of this section, provided the employing agency demonstrates that the applicant performs, on a regular basis, supervisory duties.

(20) The Management Certificate. In addition to requirements set forth in section (1) 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 field in which certification is requested;

(b) Applicants must have satisfactorily completed no less than 90 education credits as defined in section (10) of this rule;

(c) Applicants must have satisfactorily completed the prescribed Middle Management training within five (5) years prior to application for the Management Certificate; and

(d) Applicants must be presently employed in and must have served satisfactorily 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 (2) years. The required experience must have been acquired within five (5) years prior to the date of application.

(e) Upon request of the employing agency, the Department may waive the requirements of subsection (c) or (d) of this section, provided the employing agency demonstrates that the applicant performs, on a regular basis, management duties.

(21) The Executive Certificate. In addition to requirements set forth in section (1) 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 field in which certification is requested;

(b) Applicants must have satisfactorily completed no less than 90 education credits as defined in section (10) of this rule;

(c) Applicants must have satisfactorily completed 100 hours of Department-approved executive level training within five (5) years prior to application for the Executive Certificate; and

(d) Applicants must be presently employed in and must have served satisfactorily in a Middle Management position as Department Head or Assistant Department Head as defined in OAR 259-008-0005 for a period of two (2) years. The required experience must have been acquired within five (5) years prior to the date of the application.

(e) Upon request of the employing agency, the Department may waive the requirements of subsection (c) or (d) of this section, provided the employing agency demonstrates that the applicant performs, on a regular basis, the duties associated with that of a department head or assistant department head.

(22) 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 (9) months experience in the discipline in which they are requesting certification and

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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 twelve (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 (4) 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 twelve (12) hours of training specific to the telecommunicator discipline must be reported annually as required under OAR 259-008-0064.

(C) A minimum of twenty (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 181.662(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 (1) 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 181.640, 181.644, 181.651, 181.652, 181.653, 181.654, 181.665  
Stats. Implemented: ORS 181.640, 181.644, 181.651, 181.652, 181.653, 181.654 & 181.665  
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

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**Rule Caption:** Updates fingerprint card processes and requirements; housekeeping.

**Adm. Order No.:** DPSST 13-2014

**Filed with Sec. of State:** 6-24-2014

**Certified to be Effective:** 6-24-14

**Notice Publication Date:** 6-1-2013

**Rules Amended:** 259-008-0010, 259-008-0011

**Subject:** Current rule requires that all Oregon public safety officers be fingerprinted upon employment as a public safety officer. Due to advances in technology, DPSST's rules regarding submitting applicant fingerprint cards are outdated. This rule change updates the rule to reflect current fingerprint card processes and requirements. Further, this rule change also revises the wording in both 259-008-0010 and 259-008-0011 to ensure rule continuity and consistency. Finally, it eliminates obsolete language and provides minor housekeeping changes for clarity.

**Rules Coordinator:** Sharon Huck — (503) 378-2432

## 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 or parole and probation officer for more than 18 months unless the person is a citizen of the United States.

(2) Age. No law enforcement unit in this state may employ any person under the age of 21 years as a police officer, corrections officer or parole and probation officer.

(3) Fingerprints. Within 90 days of the date of employment in a certifiable position, each police, corrections, or parole and probation 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 police, corrections, or parole and probation 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 (1) 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 (5) 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.

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(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 police training, challenging basic police training, or beginning the police career officer development course, each applicant must provide evidence to DPSST that the applicant possesses the academic tools necessary to successfully complete basic police 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 police 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.

(8) Physical Examination. All law enforcement officers and applicants must be examined by a licensed physician or surgeon.

(a) The medical examination must be completed not more than 180 days prior to initial offer of employment, nor more than 90 days after initial offer of employment, and must conform to applicable standards of the Americans with Disabilities Act (ADA), Title 42 USC 1210.

(b) Individuals who have had a successfully completed physical examination (while at the same employer) and are selected for a certifiable position in a discipline in which the individual is not yet certified must complete and pass a new physical examination.

(c) Except as provided in (e) below, the Department will not require a new physical examination when a law enforcement officer obtains employment, or re-employment, in the same discipline if the officer:

(A) Has had a successfully completed a physical examination; and

(B) Is currently certified; or

(C) Is an officer currently employed full-time in another jurisdiction who has successfully completed a comparable physical examination in that jurisdiction.

(d) Notwithstanding subsection (c), a medical examination may be required by a hiring agency at its discretion.

(e) Notwithstanding subsection (c), any law enforcement officer who is separated from employment for a reason related to a physical inability to perform an essential task of a law enforcement officer must successfully complete a physical examination prior to obtaining re-employment in a certifiable position.

(f) Police, Corrections, and Parole and Probation applicants must meet the following criteria:

(A) Visual Acuity. Corrected vision must be at least 20/30 (Snellen) in each eye. Due to the demonstrated likelihood of dislodgment or breakage, candidates who are able to wear only glasses with frames must meet an uncorrected standard not worse than 20/100 (Snellen) in each eye. Those candidates who use soft contact lenses (SCLs) must have vision correctable to at least 20/30 in each eye, with no uncorrected standard, provided the employing agency will monitor compliance. Replacement glasses or lenses

(as appropriate) must be on the person or readily available at all times during each work shift.

(B) Color Vision. Red or green deficiencies may be acceptable, providing the applicant can read at least nine (9) of the first thirteen (13) plates of the Ishihara Test (24 Plate Edition). Applicants who fail the Ishihara test can meet the color vision standard by demonstrating that they can correctly discriminate colors via a field test conducted by the employer and approved by DPSST.

(C) Depth Perception. Depth Perception must be sufficient to demonstrate stereopsis adequate to perform the essential tasks of the job. The recommended test is the Random Stereo Test with 60 seconds of arc.

(D) Peripheral Vision. Visual Field Performance must be 140 degrees in the horizontal meridian combined.

(E) Night Blindness. A history of night blindness should be evaluated to determine applicant's capacity to perform essential tasks at night or in dark or low light settings.

(g) Applicants for the position of police or corrections officer must have sufficient hearing in both ears to perform essential tasks without posing a direct threat to themselves or others. The applicant must have no average 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.

(h) Applicants for the position of parole and probation officer must have sufficient hearing in both ears to perform essential tasks without posing a direct threat to themselves or others. The applicant must have no average loss greater than 35 decibels (db) at the 500, 1000, 2000, and 3000 Hertz levels in either ear with no single loss in excess of 45 db.

(i) If amplification device(s) is (are) necessary to meet the criteria in (g) or (h) above, or if applicant cannot meet the above criteria and wishes to pursue application, applicant must:

(A) Obtain a hearing evaluation by a licensed audiologist or otorhinolaryngologist (ear, nose, throat) to determine current hearing aid requirement; and

(B) Achieve a Speech Reception Threshold (SRT) of no greater than 25 db for each ear;

(C) Police, corrections and parole and probation officers must achieve a Speech Discrimination test score of no less than 90% utilizing a standard 50-word presentation at 60 db Hearing Threshold Level (HTL). The Department may require an applicant to have another examination by a licensed audiologist or otorhinolaryngologist (ear, nose, and throat) designated by the Department to verify that the applicant's hearing meets the Board's minimum hearing standard. The verification examination will be at the expense of the applicant or the applicant's employing agency. The equipment utilized for all of these evaluations must be calibrated annually using current ANSI standards.

(D) Hearing amplification devices used to meet the hearing standard must be the type that protects the applicant from further hearing degradation due to amplification of loud sounds.

(j) Applicants for the position of police, corrections, or parole and probation officer must be able to use vocal chords and have significant speaking ability to perform speaking-related essential tasks. For police and corrections officers abnormalities of the nose, throat or mouth must not interfere with the applicant's breathing or proper fitting of gas mask or similar device.

(k) Applicants for the position of police, corrections, or parole and probation officer who have a history of organic cardio-vascular disease or a finding during the medical examination of organic cardio-vascular disease will necessitate further medical evaluation.

(A) Resting blood pressure must be less than or equal to 140 mmHg systolic and 90 mmHg diastolic on three successive readings.

(B) Applicants must not have a functional and therapeutic cardiac classification greater than the Heart Association's Class A.

(C) Failure to meet guidelines (k), (A) and (B) will require further medical evaluation.

(D) If the applicant has controlled hypertension not exceeding the above standards and is on medication with side effect profiles, which do not interfere with performance of duty, then the condition may not be excludable.

(E) Functional Capacity I patients with cardiac disease may not be excludable, if they have no limitations of physical activity and ordinary physical activity does not cause discomfort and they do not have symptoms of cardiac insufficiency, nor experience angina pain.

(F) Therapeutic Classification A patients with cardiac disease, whose physical activity is restricted, should be evaluated thoroughly.

(G) If further medical examination is required under (k), it will be at the expense of the applicant or hiring authority.

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(l) All law enforcement applicants must submit a current-version DPSST Medical Examination Report (DPSST Form F2), or a medical report completed by a licensed physician containing at a minimum the information on Form F2 and a signed statement by the examining physician that the applicant does not have any condition, physical, mental, or emotional, which, in his/her opinion, suggests further examination. This Report will be furnished to the examining physician by the hiring agency. The physician must indicate that the applicant is or is not physically able to perform the duties of a law enforcement officer as prescribed by DPSST.

(m) A copy of the Medical Examination Report must be sent to the Department prior to acceptance into a basic course, or any course where such report is required by the Department.

(n) The Department may require an applicant offered conditional employment to take a subsequent examination by a licensed physician of the Department's choice at the expense of the applicant or the hiring authority.

(o) The Board may waive any physical requirement where, in its judgment, the waiver would not be detrimental to the performance of an officer's duties, including the protection of the public and the safety of co-workers. The applicant may be required to demonstrate the ability to perform the essential functions of the job.

(p) A person or department head requesting a waiver of any physical requirement set forth in section (8) of this rule shall submit the request to the Department in writing, accompanied by supporting documents or pertinent testimony which would justify the action requested. The supporting documents must include information pertinent to the waiver request. The Board or Department may require additional documentation or testimony by the person or department head requesting the waiver if clarification is needed. Any expense associated with providing documentation or testimony will be borne by the person requesting the waiver or the requesting agency. If the person requesting the waiver does not obtain employment within one (1) year from the date a waiver is granted, the waiver will be considered void.

(A) If the Board grants a waiver, it will be recorded on the certification and any subsequent certification unless removed by the Board upon proof that the condition prompting the waiver no longer exists.

(B) If the Board denies a request for a waiver of any physical requirement set forth in section (8) of this rule, the Department will issue Notice and proceed as provided in section (9) of this rule.

## (9) Contested Case Hearing Process for Denial of Waiver.

(a) Initiation of Proceedings: Upon determination that the reason for denial of a waiver is supported by factual data meeting the statutory and administrative rule requirements, a contested case notice will be prepared.

(b) Contested Case Notice: All 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 in which a hearing was 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 181.640, 181.644 & 183.341

Stats. Implemented: ORS 181.640, 181.644 & 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

## 259-008-0011

### Minimum Standards for Employment as a Telecommunicator and Emergency Medical Dispatcher

(1) Fingerprints. Within 90 days of the date of employment in a certifiable position, each telecommunicator and emergency medical dispatcher must be fingerprinted on a standard applicant fingerprint card.

(a) If the hiring agency is a public agency, it is responsible for fingerprinting and forwarding one fingerprint card to the Oregon State Police Identification Services Section for processing and the assignment of an identification number.

(b) If the hiring agency is a private agency, it is responsible for fingerprinting and forwarding one fingerprint card to the Department along with the appropriate fee.

(c) Applications for certification will not be processed until an applicant's fingerprints have cleared Oregon State Police Identification Services.

(d) If any procedural change is made by either the Federal Bureau of Investigation or the Oregon State Police Identification Services Section, the Department will comply with the most current requirements.

(2) Criminal Records. No telecommunicator or emergency medical dispatcher will 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 (1) 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.

## (3) Notification of Conviction:

(a) A telecommunicator or emergency medical dispatcher who is convicted of a crime as identified in OAR 259-008-0070 while employed by a public or private public safety agency must notify the agency head within 72 hours of conviction.

(b) When an agency receives notification of a conviction from its employee or another source, they must notify the Department within five (5) 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 conviction.

(4) Moral Fitness (Professional Fitness). All telecommunicators and emergency medical dispatchers 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).

## (5) Education:

(a) Applicants for the position of a telecommunicator or emergency medical dispatcher 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 a degree-granting college or university accredited by a recognized national or regional accrediting body, or 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.

(6) Academic Proficiency Standard. Before beginning basic telecommunicator or Emergency Medical Dispatcher (EMD) training or challenging basic telecommunicator training, each applicant must provide evidence

# ADMINISTRATIVE RULES

to DPSST that the applicant possesses the academic tools necessary to successfully complete basic telecommunicator or EMD training.

(a) The hiring agency is responsible for ensuring a telecommunicator/EMD proficiency test or validated written test designed to evaluate predictors of job-related skills and behavior 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 telecommunicator or EMD training.

(b) Individuals submitting transcripts verifying that they possess at least a four-year academic degree from an institution recognized by DPSST under the provisions of OAR 259-008-0045 are exempt from this testing requirement.

(7) Physical Examination. All Telecommunicators and Emergency Medical Dispatcher applicants must be examined by a licensed health professional.

(a) The medical examination must be completed not more than 180 days prior to initial offer of employment, and not more than 90 days after the initial offer of employment.

(b) The examination must conform to applicable standards of the Americans with Disabilities Act (ADA), Title 42 USC 12101.

(c) Individuals who have successfully completed a physical examination (while at the same employer) and are selected for a certifiable position in a discipline in which the individual is not yet certified must complete and pass a new physical examination.

(d) The Department will not require a new physical examination when a Telecommunicator or Emergency Medical Dispatcher obtains employment or re-employment in the same discipline if the Telecommunicator or Emergency Medical Dispatcher:

(A) Has had a successfully completed a physical examination, and

(B) Is currently certified; or

(C) Is currently employed full-time in another jurisdiction and has successfully completed a comparable physical examination in that jurisdiction.

(e) Notwithstanding subsection (d), a medical examination may be required by a hiring agency at its discretion.

(f) Telecommunicator and Emergency Medical Dispatcher applicants must meet the following criteria:

(A) Visual Acuity. Corrected vision must be at least 20/30 (Snellen) when tested using both eyes together.

(B) Color Vision. Red or green deficiencies may be acceptable, providing the applicant can read at least nine (9) of the first thirteen (13) plates of the Ishihara Test (24 Plate Edition). Applicants who fail the Ishihara test can meet the color vision standard by demonstrating that they can correctly discriminate colors via a field test conducted by the employer and approved by DPSST. The results of the field test and the methods for testing must be maintained by the employing agency.

(i) Any employing agency that conducts a field test to meet the color vision standard must also complete a Department approved affidavit attesting that the applicant can either correctly discriminate colors or is able to successfully perform the required tasks of a Telecommunicator or Emergency Medical Dispatcher, notwithstanding the applicant's inability to correctly discriminate colors.

(ii) Any affidavit required by (i), that the Department receives and accepts, is non-transferable to any subsequent employer and may not be used by any other entity for certification purposes.

(iii) Notwithstanding subsection (d) of this rule, each employer must complete an agency-specific field test and a Department approved affidavit as described in subsection (i) of this section for any Telecommunicator or Emergency Medical Dispatcher who previously met the color vision standard by completing a field test.

(C) Peripheral Vision. Visual Field Performance must be 120 degrees in the horizontal meridian combined.

(g) Applicants for the position of Telecommunicator or Emergency Medical Dispatcher must have sufficient hearing in both ears to perform essential tasks without posing a direct threat to themselves or others.

(A) The applicant must meet National Emergency Number Association (NENA) hearing standard 54-002 (June 10, 2006).

(B) If the applicant cannot meet the identified hearing standard without correction, the applicant may utilize hearing amplification devices to meet the hearing standard. The Department may require an applicant to have another examination by a licensed audiologist or otorhinolaryngologist (ear, nose, throat) designated by the Department to verify that the applicant's corrected hearing meets the Board's minimum hearing standard.

(h) Applicants for the position of Telecommunicator or Emergency Medical Dispatcher must be able to use vocal cords and exhibit normal speech patterns, sufficient to perform speaking-related essential tasks.

(8) If further medical examination is required, it will be at the expense of the applicant or the hiring authority.

(9) All Telecommunicator and Emergency Medical Dispatcher applicants must submit a current-version Medical Examination Report for Telecommunicators and Emergency Medical Dispatchers (DPSST Form F-2T) or a signed medical report completed by a licensed health professional identified by the Department containing, at a minimum, the information on Form F-2T prior to the acceptance into a basic course or any course where such a report is required by the Department. The Form F-2T will be furnished to the examining health professional by the hiring agency.

(10) The Department may require an applicant offered conditional employment to take a subsequent examination by a licensed physician of the Department's choice at the expense of the applicant or the hiring authority.

(11) The Board may waive any physical requirement where, in its judgment, the waiver would not be detrimental to the performance of a Telecommunicator or Emergency Medical Dispatcher's duties. The applicant may be required to demonstrate the ability to perform the essential functions of the job.

(12) A person or department head requesting a waiver of any physical requirement set forth in section (11) of this rule must submit the request to the Department in writing, accompanied by supporting documents or pertinent testimony which would justify the action requested. The supporting documents must include information pertinent to the waiver request.

(a) The Board or Department may require additional documentation or testimony by the person or department head requesting the waiver if clarification is needed.

(b) Any expense associated with providing documentation or testimony will be borne by the person requesting the waiver or the requesting agency.

(c) If the person requesting the waiver does not obtain employment within one (1) year from the date a waiver is granted, the waiver will be considered void.

(d) If the Board grants a waiver, it will be recorded on the certification and any subsequent certification unless removed by the Board upon proof that the condition prompting the waiver no longer exists.

(e) If the Board denies a request for a waiver of any physical requirement set forth in section (7) of this rule, the Department will issue Notice and proceed as provided in section (13) of this rule.

(13) Contested Case Hearing Process for Denial of Waiver.

(a) Initiation of Proceedings: Upon determination that the reason for denial of a waiver is supported by factual data meeting the statutory and administrative rule requirements, a contested case notice will be prepared.

(b) Contested Case Notice: All 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 in which a hearing was 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 181.640, 181.644 & 183.341

Stats. Implemented: ORS 181.640, 181.644 & 183.341

Hist.: BPSST 1-2002, f. & cert. ef. 2-6-02; DPSST 1-2004, f. 1-16-04, cert. ef. 1-20-04; DPSST 5-2004, f. & cert. ef. 4-23-04; DPSST 3-2007, f. & cert. ef. 1-12-07; DPSST 10-2007, f. & cert. ef. 10-15-07; DPSST 5-2008, f. & cert. ef. 4-15-08; DPSST 21-2008, f. 12-15-08, cert. ef. 1-1-09; DPSST 6-2009, f. & cert. ef. 7-13-09; DPSST 9-2010(Temp), f. & cert. ef. 10-15-10 thru 4-12-11; DPSST 13-2010, f. & cert. ef. 12-23-10; DPSST 9-2011, f. & cert. ef. 6-28-11; DPSST 14-2011, f. 9-26-11, cert. ef. 10-1-11; DPSST 5-2012, f. & cert. ef. 3-26-12; DPSST 19-2012, f. & cert. ef. 8-31-12; DPSST 18-2013, f. & cert. ef. 7-23-13; DPSST 13-2014, f. & cert. ef. 6-24-14

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**Rule Caption:** Adds an additional certification requirement for armed private security professionals regarding firearms instruction.

# ADMINISTRATIVE RULES

**Adm. Order No.:** DPSST 14-2014  
**Filed with Sec. of State:** 6-24-2014  
**Certified to be Effective:** 6-24-14  
**Notice Publication Date:** 6-1-2014  
**Rules Amended:** 259-060-0120

**Subject:** This rule change adds the requirement to rule that armed private security professionals who fail to complete the armed annual refresher course must complete the 24-hours of basic firearms instruction before reissuance of certification.

**Rules Coordinator:** Sharon Huck—(503) 378-2432

## 259-060-0120

### Private Security Professional Certification and Responsibilities

(1) All private security professional applicants must complete an application in accordance with OAR 259-060-0025.

(2) All private security professionals must be in compliance with the minimum standards for certification as listed in OAR 259-060-0020.

(3) Alarm Monitor Private Security Professional.

(a) A certified private security alarm monitor professional is authorized to perform the duties defined in OAR 259-060-0010.

(b) Basic training consists of successful completion of eight hours of alarm monitor basic classroom instruction and exam and a four-hour alarm monitor assessment.

(c) Biennial alarm monitor renewal training consists of a four-hour alarm monitor renewal course and exam.

(4) Unarmed Private Security Professional.

(a) A certified unarmed private security professional is authorized to perform the duties defined in OAR 259-060-0010.

(b) Basic training consists of successful completion of eight hours of unarmed basic classroom instruction and exam and a four-hour unarmed assessment.

(c) Biennial unarmed renewal training consists of a four-hour unarmed renewal course and exam.

(5) Armed Private Security Professional.

(a) A certified armed private security professional is authorized to perform the duties defined in OAR 259-060-0010.

(b) In addition to the minimum standards for unarmed certification, armed professionals must also be in compliance with the firearms standards listed in OAR 259-060-0020.

(c) Basic training consists of successful completion of:

(A) Eight hours of unarmed basic classroom instruction, exam and four-hour unarmed assessment; and

(B) Basic firearms course as defined in OAR 259-060-0060 which consists of a minimum 24 hours of basic armed instruction, a written examination, safe gun handling test and marksmanship qualification.

(d) Armed annual refresher course consists of a minimum of four hours including the armed refresher course and exam and firearms marksmanship requalification.

(e) In addition to the annual refresher course, armed private security professionals must complete an unarmed renewal training biennially.

(f) Armed private security professionals who fail to complete the armed annual refresher course must complete the 24-hours of basic firearms instruction before reissuance of certification.

(6) Department-accredited courses may satisfy the training requirements listed above.

(7) Failure to complete any training requirements as prescribed by this rule may result in denial or revocation of private security certification or licensure as prescribed in OAR 259-060-0300 and civil penalties as prescribed in OAR 259-060-0450.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 181.873 - 181.878 & 181.883 - 181.885

Stats. Implemented: ORS 181.873 - 181.878 & 181.883 - 181.885

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 3-2005(Temp), f. 4-25-05, cert. ef. 5-1-05 thru 10-28-05; DPSST 9-2005, 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 6-2008, f. & cert. ef. 4-15-08; DPSST 25-2012, f. 10-26-12, cert. ef. 11-1-12; DPSST 12-2013, f. & cert. ef. 6-24-13; DPSST 14-2014, f. & cert. ef. 6-24-14

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**Rule Caption:** To correct an inadvertent filing error regarding denial/suspension/revocation.

**Adm. Order No.:** DPSST 15-2014  
**Filed with Sec. of State:** 6-24-2014  
**Certified to be Effective:** 6-24-14  
**Notice Publication Date:** 6-1-2014  
**Rules Amended:** 259-060-0300

**Rules Repealed:** 259-060-0300(T)

**Subject:** On January 2, 2014, DPSST filed a permanent rule change to OAR 259-060-0300, which allowed DPSST staff to consult and reach a consensus to summarily dispose of or administratively close cases involving discretionary disqualifying misconduct of private security providers. Additionally, the rule change corrected an ORS citation for the crime of Interfering with Public Transportation and minor housekeeping.

On January 28, 2014, DPSST filed another permanent rule change to OAR 259-060-0300, updating and clarifying the contested case process involving default orders and housekeeping. During the process of this rule change, the permanent changes made to OAR 259-060-0300 on January 2, 2014, were inadvertently omitted.

On March 6, 2014, with DPSST Director Eriks Gabliks' consent, a temporary rule correcting this error was filed with the Secretary of State.

On April 24, 2014, The Board on Public Safety Standards and Training unanimously voted to approve filing the proposed rule language for OAR 259-060-0300. This permanent rule filing replaces the temporary rule. This filing also addresses outlining errors and housekeeping for clarity and consistency.

**Rules Coordinator:** Sharon Huck—(503) 378-2432

## 259-060-0300

### Denial/Suspension/Revocation

(1) It is the responsibility of the Board, through the Private Security and Investigator Policy Committee, to set the standards, and of the Department to uphold them, to ensure the highest level of professionalism and discipline. The Board will uphold these standards at all times unless the Board determines that neither the safety of the public or respect of the profession is compromised.

(2) Mandatory Grounds for Denying, Suspending or Revoking Private Security Certification or Licensure. The Department must deny or revoke a certification or license of any applicant or private security provider after written notice and hearing, if requested, upon a finding that the applicant or private security provider:

(a) Has been convicted of a person felony as defined by the Criminal Justice Commission in OAR 213-003-0001 in effect on April 27, 2012 or any crime with similar elements in any other jurisdiction;

(b) Is required to register as a sex offender under ORS 181.595, 181.596, 181.597 or 181.609; or

(c) Has, within a period of ten years prior to application or during certification or licensure, been convicted of the following:

(A) Any felony other than those described in subsection (a) above or any crime with similar elements in any other jurisdiction;

(B) A person class A misdemeanor as defined by the Criminal Justice Commission in OAR 213-003-0001 in effect on April 27, 2012 or any crime with similar elements in any other jurisdiction;

(C) Any crime involving any act of domestic violence as defined in ORS 135.230 or any crime with similar elements in any other jurisdiction;

(D) Any misdemeanor or felony conviction involving the unlawful use, possession, delivery or manufacture of a controlled substance, narcotic, or dangerous drug in this or any other jurisdiction;

(E) Any misdemeanor arising from conduct while on duty as a private security provider; or

(F) Any of the following misdemeanors:

161.405(2)(d) (Attempt to Commit a Class C Felony or Unclassified Felony);

161.435(2)(d) (Solicitation of a Class C Felony);

161.450(2)(d) (Conspiracy to Commit a Class A misdemeanor);

162.075 (False Swearing);

162.085 (Unsworn Falsification);

162.145 (Escape III);

162.235 (Obstructing Governmental or Judicial Administration);

162.247 (Interfering with a Peace Officer);

162.295 (Tampering with Physical Evidence);

162.335 (Compounding a Felony);

162.365 (Criminal Impersonation);

162.369 (Possession of a False Law Enforcement Identification Card);

162.375 (Initiating a False Report);

162.385 (Giving False Information to Police Officer for a Citation or Arrest on a Warrant);

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162.415 (Official Misconduct I);  
163.435 (Contributing to the Sexual Delinquency of a Minor);  
164.043 (Theft III);  
164.045 (Theft II);  
164.125 (Theft of Services);  
164.140 (Criminal Possession of Rented or Leased Personal Property);  
164.235 (Possession of Burglar's Tools);  
164.255 (Criminal Trespass I);  
164.265 (Criminal Trespass while in Possession of a Firearm);  
164.335 (Reckless Burning);  
164.354 (Criminal Mischief II);  
164.369 (Interfering with Police Animal);  
164.377(4) (Computer Crime);  
165.007 (Forgery II);  
165.055(4)(a) (Fraudulent Use of a Credit Card);  
165.065 (Negotiating a Bad Check);  
165.570 (Improper Use of Emergency Reporting System);  
166.116 (Interfering with Public Transportation);  
166.240 (Carrying of Concealed Weapons);  
166.250 (Unlawful Possession of Firearms);  
166.350 (Unlawful Possession of Armor Piercing Ammunition);  
166.425 (Unlawful Purchase of Firearm);  
167.007 (Prostitution);  
167.062 (Sadomasochistic Abuse or Sexual Conduct in a Live Show);  
167.075 (Exhibiting an Obscene Performance to a Minor);  
167.080 (Displaying Obscene Material to Minors);  
167.262 (Adult Using Minor in Commission of Controlled Substance Offense);  
167.320 (Animal Abuse I);  
167.330 (Animal Neglect I);  
471.410 (Providing Liquor to a Person Under 21 or Intoxicated Person);  
807.620 (Giving False Information to a Police Officer/Traffic);  
811.540(3)(b) (Fleeing or Attempting to Elude Police Officer);

(G) Any crime with similar elements in any other jurisdiction.

(3) Emergency Suspension Order: The Department may issue an emergency suspension order pursuant to OAR 137-003-0560 immediately suspending a private security provider's certification or licensure upon finding that a person has been charged with any of the mandatory disqualifying crimes listed in section (2) of this rule. The report may be in any form and from any source.

(a) The Department may combine the hearing on the Emergency Suspension Order with any underlying proceeding affecting the license or certificate.

(b) The sole purpose of the emergency suspension hearing will be to determine whether the individual was charged with a mandatory disqualifying crime. Upon showing that an individual was not charged with a mandatory disqualifying crime, the suspension of the individual's certification or licensure will be rescinded, otherwise the suspension will remain in effect until final disposition of the charges.

(4) Discretionary Grounds for Denying, Suspending or Revoking Private Security Certification or Licensure. The Department may deny or revoke the certification or licensure of any applicant or private security provider after written notice and hearing, if requested, upon finding that an applicant or private security provider:

(a) Fails to meet the minimum standards for certification or licensure as a private security provider as defined in OAR 259-060-0020;

(b) Has falsified any information submitted on the application for certification or licensure or any documents submitted to the Department pertaining to private security certification or licensure;

(c) Has violated any of the temporary assignment provisions of OAR 259-060-0120(1);

(d) Has failed to submit properly completed forms or documentation in a time frame as designated by the Department;

(e) Has failed to pay a civil penalty or fee imposed by the Department when due;

(f) Has failed to comply with any provisions found in the Act or these rules; or

(g) Lacks moral fitness. For the purposes of this standard, the Department, through the Policy Committee and Board, has defined lack of moral fitness as:

(A) Dishonesty. Lack of honesty includes, but is not limited to, untruthfulness, dishonesty by admission or omission, deception, misrepresentation or falsification;

(B) Lack of Good Character. Lack of good character includes, but is not limited to, failure to be faithful and loyal to the employer's charge and failure to use discretion and compassion;

(C) Mistreatment of Others. Mistreatment of others includes, but is not limited to, violating another person's rights and failure to respect others;

(D) Lack of Public Trust. Failure to maintain public trust and confidence includes, but is not limited to, acting in an unlawful manner or not adhering to recognized industry standards; or

(E) Lack of Respect for the Laws of this State or Nation. Lack of respect for the laws of this state and nation includes a pattern of behavior

which leads to three or more arrests or convictions within a ten-year period prior to application or during certification or licensure.

(5) Scope of Revocation. Whenever the Department revokes the certification or licensure of a private security provider under the provisions of this rule, the revocation will encompass all private security certificates and licenses the Department has issued to that person.

(6) Denial and Revocation Procedure.

(a) Employer Request: When the employer of the private security provider requests that certification or licensure be denied or revoked, the employer must submit in writing to the Department the reason for the requested action and include all factual information supporting the request.

(b) Department Initiated Request: Upon receipt of factual written information from any source other than an employer, and pursuant to ORS 181.878, the Department may request that the Board deny, revoke or suspend the private security provider's certification or licensure.

(c) Department Staff Review: When the Department receives information from any source that a private security provider may not meet the established standards for Oregon private security providers, the Department will review the request and the supporting factual information to determine if a sufficient factual basis exists to support the request for denial, suspension, or revocation of a private security license or certification under the Act or these administrative rules.

(A) If the Department determines that a private security provider may have engaged in discretionary disqualifying misconduct.

(B) The Department will seek input from the affected private security provider by allowing the individual to provide, in writing, information for review.

(C) The Department may take action upon discovery of discretionary disqualifying misconduct when consensus is reached that the nature of the discretionary disqualifying misconduct is appropriate for summary staff disposition or administrative closure.

(D) If the Department determines that a private security provider may have engaged in discretionary disqualifying misconduct, but is unable to reach a consensus to summarily dispose of or administratively close the case, the case will be presented to the Board, through the Policy Committee.

(d) In making a decision to authorize initiation of proceedings under subsection (e) of this rule based on discretionary disqualifying misconduct, Department staff, the Policy Committee and Board will consider mitigating and aggravating circumstances.

(e) Initiation of Proceedings: Upon determination that a sufficient factual basis exists to support the request for denial, suspension, or revocation of a private security license or certification under the Act or these administrative rules, the Department will prepare and serve a contested case notice on the private security provider.

(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) In discretionary cases heard by a policy committee, the contested case notice will be served on the private security provider prior to Board review. If the Board disapproves the Policy Committee's recommendation, the Department will withdraw the contested case notice.

(C) Applicants who choose to withdraw their application forfeit their application fees.

(f) Response Time:

(A) A party who has been served with an Emergency Suspension Order has 90 days from the date of mailing or personal service of the Order in which to file a written request for hearing with the Department.

(B) A party who has been served with a Contested Case Notice of Intent to Deny Certification or Licensure has 60 days from the date of mailing or personal service of the notice in which to file a written request for hearing or a written request withdrawing their application from consideration with the Department.

(C) A party who has been served with a Contested Case Notice of Intent to Revoke Certification or Licensure has 20 days from the date of the mailing or personal service of the notice in which to file a written request for hearing with the Department.

(g) Default Order: If a timely request for a hearing is not received, the Contested Case Notice will become a final order denying or revoking certification pursuant to OAR 137-003-0672, pending Board affirmation.

(h) Final Order:

(A) A final order will be issued pursuant to the applicable provisions of the Attorney General's Model Rules of Procedure adopted under OAR 259-005-0015 if a private security provider fails to file exceptions and arguments within 20 days of issuance of the proposed order.

# ADMINISTRATIVE RULES

(B) Department-proposed amendments to the proposed order 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 is issued.

(i) Stipulated Order Revoking Certification or Licensure: The Department may enter a stipulated order revoking certification or licensure of a private security provider upon the person's voluntary agreement to terminate an administrative proceeding to revoke a certification or license, or to surrender a certification or license, under the terms and conditions provided in the stipulated order.

(7) Appeal Procedure. Private security applicants and providers aggrieved by the findings and Order of the Department may file an appeal with the Court of Appeals from the Final Order of the Department, as provided in ORS 183.480.

(8) Notwithstanding section (9) of this rule, any private security applicant or provider whose certification or licensure is denied or revoked will be ineligible to hold any private security certification or licensure for a period of ten years from the date of the final order issued by the Department.

(9) Reconsideration Process. Any individual whose certification or license has been denied or revoked for discretionary grounds may apply for reconsideration of the denial or revocation after a minimum four-year ineligibility period from the date of the final order.

(a) All applicants for reconsideration are required to submit a new application packet along with a Form PS- 30 Application for Reconsideration. The applicant may provide any mitigating information for the consideration of DPSST, Policy Committee, and Board.

(b) In reconsidering the application of an applicant whose certification or licensure was previously denied or revoked for discretionary grounds, DPSST, the Policy Committee and the Board may consider mitigating and aggravating circumstances.

(c) The Board's decision to deny an application for reconsideration will be subject to the contested case procedure described under subsection (6) of this rule.

(d) If an application for reconsideration is denied, the original ineligibility date remains in effect as described in subsection (8) of this rule.

Stat. Auth.: ORS 181.878, 181.882 & 181.885

Stats. Implemented: ORS 181.878 & 181.885

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 10-2003(Temp), f. & cert. ef. 6-16-03 thru 12-1-03; DPSST 12-2003, f. & cert. ef. 7-24-03; DPSST 6-2004, f. & cert. ef. 4-23-04; DPSST 5-2005(Temp), f. & cert. ef. 8-3-05 thru 1-1-06; DPSST 10-2005, f. & cert. ef. 10-14-05; DPSST 6-2006, f. & cert. ef. 5-15-06; DPSST 25-2012, f. 10-26-12, cert. ef. 11-1-12; DPSST 12-2013, f. & cert. ef. 6-24-13; DPSST 3-2014, f. & cert. ef. 1-2-14; DPSST 4-2014, f. & cert. ef. 1-28-14; DPSST 8-2014(Temp), f. & cert. ef. 3-6-14 thru 8-1-14; DPSST 15-2014, f. & cert. ef. 6-24-14

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**Rule Caption:** Corrects omission of 259-008-0070 from previous filing and replaces temporary rule regarding discretionary disqualifying crimes.

**Adm. Order No.:** DPSST 16-2014

**Filed with Sec. of State:** 6-24-2014

**Certified to be Effective:** 6-24-14

**Notice Publication Date:** 6-1-2014

**Rules Amended:** 259-008-0070

**Rules Repealed:** 259-008-0070(T)

**Subject:** DPSST discovered two rule filing errors regarding OAR 259-008-0070. The first error occurred during a proposed rule filing in November, 2013, involving clarifying the instructor certification process. This rule change involved several of DPSST's rules, including OAR 259-008-0070. During the final rule filing procedure, it was noticed that OAR 259-008-0070 was inadvertently omitted from the list of rules being amended on the Notice of Proposed Rulemaking filed with the Secretary of State's Office. To correct this omission, DPSST filed another Notice of Proposed Rulemaking listing OAR 259-008-0070 as an amended rule. The public comment period for this rule change closed on March 24, 2014, with no comments received.

The second error occurred during another rule filing in November, 2013, which updated and clarified the contested case process, as well as default orders. This rule change was filed permanently on January 28, 2014; however, during the process, permanent changes

made to OAR 259-008-0070 in September, 2013, were inadvertently omitted. The September, 2013, rule filing addressed changes stemming from HB 2712 (Oregon Laws, Chapter 597). OAR 259-008-0070 was changed to add numerous discretionary disqualifying crimes and presumptive categories. On February 27, 2014, with DPSST Director Eriks Gabliks' consent, a temporary rule correcting this error was filed with the Secretary of State. On April 24, 2014, The Board on Public Safety Standards and Training unanimously voted to approve filing the proposed rule language for OAR 259-008-0070 to replace the temporary rule. On June 23, 2014, the public comment period closed, with no comments received.

This rule filing corrects both errors. It also addresses outlining errors and housekeeping for clarity and consistency.

**Rules Coordinator:** Sharon Huck—(503) 378-2432

## 259-008-0070

### Denial/Revocation

(1) It is the responsibility of the Board to set the standards, and of the Department to uphold them, to ensure the highest levels of professionalism and discipline. These standards shall be upheld at all times unless the Board determines that neither the safety of the public nor respect of the profession is compromised.

(2) Definitions. For purposes of this rule, the following definitions apply:

(a) "Denial" or "Deny" means the refusal to grant a certification for mandatory grounds or discretionary disqualifying misconduct as identified in this rule, pursuant to the procedures identified in (9) of this rule.

(b) "Discretionary Disqualifying Misconduct" means misconduct identified in OAR 259-008-0070(4).

(c) "Revocation" or "Revoke" means to withdraw the certification of a public safety professional for mandatory grounds or discretionary disqualifying misconduct as identified in this rule, pursuant to the procedures identified in section (9) of this rule.

(3) Mandatory Grounds for Denying or Revoking Certification of a Public Safety Professional:

(a) Standards and Certification must deny or revoke the certification of any public safety professional after written notice and hearing, based upon a finding that:

(A) The public safety professional has been discharged for cause from employment as a public safety professional. For purposes of this rule, "discharged for cause," means an employer-initiated termination of employment for any of the following reasons after a final determination has been made. If, after service by Standards and Certification of a Notice of Intent to Deny or Revoke Certifications (NOI), the public safety professional provides notice to Standards and Certification within the time stated in the NOI that the discharge has not become final, then Standards and Certification may stay further action, pending a final determination.

(i) Dishonesty: Includes untruthfulness, dishonesty by admission or omission, deception, misrepresentation, falsification;

(ii) Disregard for the Rights of Others: Includes violating the constitutional or civil rights of others, conduct demonstrating a disregard for the principles of fairness, respect for the rights of others, protecting vulnerable persons, and the fundamental duty to protect and serve the public.

(iii) Gross Misconduct: means an act or failure to act that creates a danger or risk to persons, property, or to the efficient operation of the agency, recognizable as a gross deviation from the standard of care that a reasonable public safety professional would observe in a similar circumstance;

(iv) Incompetence: means a demonstrated lack of ability to perform the essential tasks of a public safety professional that remedial measures have been unable to correct; or

(v) Misuse of Authority: Includes abuse of public trust, abuse of authority to obtain a benefit, avoid a detriment, or harm another, and abuse under the color of office.

(B) The public safety professional has been convicted 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;

(C) The public safety professional has been convicted of violating any law of this state or any other jurisdiction involving the unlawful use, possession, delivery or manufacture of a controlled substance, narcotic or dangerous drug, except the Department may deny certification for a conviction of possession of less than one ounce of marijuana, which occurred prior to certification; or

# ADMINISTRATIVE RULES

(D) The public safety professional has been convicted in this state of any of the following offenses, or of their statutory counterpart(s) in any other jurisdiction, designated under the law where the conviction occurred as being punishable as a crime:

25.785(3) (False Submission of a Statement Regarding Social Security Number);  
106.041(5) (Intentional False Statement on Marriage License; Application);  
162.075 (False swearing);  
162.085 (Unsworn falsification);  
162.145 (Escape in the third degree);  
162.175 (Unauthorized departure);  
162.195 (Failure to appear in the second degree);  
162.235 (Obstructing governmental or judicial administration);  
162.247 (Interfering with a peace officer);  
162.257 (Interfering with a firefighter or emergency medical technician);  
162.295 (Tampering with physical evidence);  
162.305 (Tampering with public records);  
162.315 (Resisting arrest);  
162.335 (Compounding);  
162.365 (Criminal impersonation);  
162.369 (Possession of false law enforcement identification);  
162.375 (Initiating a false report);  
162.385 (Giving false information to a peace officer for a citation or arrest warrant);  
162.415 (Official misconduct in the first degree);  
163.200 (Criminal mistreatment in the second degree);  
163.454 (Custodial sexual misconduct in the second degree);  
163.687 (Encouraging child sexual abuse in the third degree);  
163.732 (Stalking);  
164.045 (Theft in the second degree);  
164.085 (Theft by deception);  
164.095 (Theft by receiving);  
164.125 (Theft of services);  
164.235 (Possession of a burglary tool or theft device);  
164.877 (Unlawful tree spiking; unlawful possession of substance that can damage certain wood processing equipment);  
165.007 (Forgery in the second degree);  
165.017 (Criminal possession of a forged instrument in the second degree);  
165.037 (Criminal simulation);  
165.042 (Fraudulently obtaining a signature);  
165.047 (Unlawfully using slugs);  
165.055 (Fraudulent use of a credit card);  
165.065 (Negotiating a bad check);  
165.080 (Falsifying business records);  
165.095 (Misapplication of entrusted property);  
165.100 (Issuing a false financial statement);  
165.102 (Obtain execution of documents by deception);  
165.118(1) (Unlawfully Altering Metal Property);  
165.118(2)(a)(b) (False Statement on a Metal Property Record);  
165.825 (Sale of drugged horse);  
166.065(1)(b) (Harassment);  
166.155 (Intimidation in the second degree);  
166.270 (Possession of weapons by certain felons);  
166.350 (Unlawful possession of armor-piercing ammunition);  
166.416 (Providing false information in connection with a transfer of a firearm);  
166.418 (Improperly transferring a firearm);  
166.470 (Limitations and conditions for sales of firearms);  
167.007 (Prostitution);  
167.075 (Exhibiting an obscene performance to a minor);  
167.080 (Displaying obscene materials to minors);  
167.132 (Possession of gambling records in the second degree);  
167.147 (Possession of a gambling device);  
167.222 (Frequenting a place where controlled substances are used);  
167.262 (Adult using minor in commission of controlled substance offense);  
167.320 (Animal abuse in the first degree);  
167.330 (Animal neglect in the first degree);  
167.332 (Prohibition against possession of domestic animal);  
167.333 (Sexual assault of animal);  
167.337 (Interfering with law enforcement animal);  
167.355 (Involvement in animal fighting);  
167.370 (Participation in dogfighting);  
167.431 (Participation in cockfighting);  
167.820 (Concealing the birth of an infant);  
305.815 (False Swearing of Return, Statement or Other Tax Document);  
307.990 (Willful False Statement to Property Tax Assessment Officer);  
398.224 (Refusal to Appear to Testify);  
462.415(2) (Racing a Prohibited Animal);  
462.420 (Stimulating or Depressing Participating Animal);  
462.430 (Influencing the Results of Races);  
462.450 (Possession, Transportation or Use of Drugs at Race Course);  
462.460 (Racing an Animal Under Name or Designation Other than Registered Name or Designation or Altering License);  
462.470 (Aiding or Abetting Racing Animal Under Name or Designation Other than Registered Name or Designation);  
475.525 (Sale of drug paraphernalia);  
475.840 (Manufacture or deliver a controlled substance);  
475.860 (Unlawful delivery of marijuana);  
475.864 (Unlawful possession of marijuana);  
475.906 (Distribution of controlled substance to minors);  
475.910 (Application of controlled substance to the body of another person);  
475.912 (Unlawful delivery of imitation controlled substance);  
475.914 (Unlawful acts, registrant delivering or dispensing controlled substance);  
475.916 (Prohibited acts involving records and fraud);  
475.918 (Falsifying drug test results);  
475.920 (Providing drug test falsification equipment);  
475.950 (Failure to report precursor substances transaction);  
475.955 (Failure to report missing precursor substances);  
475.960 (Illegally selling drug equipment);

475.965 (Providing false information on precursor substances report or record);  
475.969 (Unlawful possession of phosphorus);  
475.971 (Unlawful possession of anhydrous ammonia);  
475.973 (Unlawful possession of ephedrine, pseudoephedrine or phenylpropranolamine; unlawful distribution);  
475.975 (Unlawful possession of iodine in its elemental form);  
475.976 (Unlawful possession of iodine matrix);  
657.300 (False Statements or Failure to Report Material Fact by Employer);  
657.495 (Fraudulently Lowering Contributions);  
658.415 (False Swearing or Affirmation of Application of License, Proof of Insurance and Financial Responsibilities of Farm Labor Contractors);  
659.810 (Filing a False Statement with Employment Agency to Secure Labor);  
679.170(3) (Fraudulent Alteration of Diploma, Certificate or Transcript);  
679.170(5) (Willful False Statement to Oregon Board of Dentistry);  
689.995 (Willfully Furnishing False Information; Pharmacists, Drug Outlets, Drug Sales);  
807.520 (False swearing to receive license);  
807.620 (Giving false information to police officer);

(E) Any offense involving any acts of domestic violence as defined in ORS 135.230.

(b) Standards and Certification must take action on a mandatory disqualifying conviction, regardless of when it occurred, unless Standards and Certification, or the Board, has previously reviewed the conviction and approved the public safety professional for certification under a prior set of standards.

(4) Discretionary disqualifying misconduct as Grounds for Denying or Revoking Certification(s) of a Public Safety Professional:

(a) Standards and Certification may deny or revoke the certification of any public safety professional after written notice, and a hearing, if requested, based upon a finding that:

(A) The public safety professional falsified any information submitted on the application for certification or on any documents submitted to the Board or Department;

(B) The public safety professional has engaged in conduct that fails to meet the applicable minimum standards as described in subsection (b), minimum training or the terms and conditions established under ORS 181.640;

(C) The public safety professional has engaged in conduct that resulted in the conviction of an offense, punishable as a crime, other than a mandatory disqualifying crime listed in section (3) of this rule, in this state or any other jurisdiction. Presumptive categories have been identified for the crimes listed in subsection (4), based solely on the elements of the crime. Other categories may apply based on the conduct leading to the conviction; or

(D) A public safety officer failed to attend at least one session with a mental health professional within six months after the public safety officer was involved in using deadly physical force, as required by ORS 181.789.

(b) For purposes of this rule, discretionary disqualifying misconduct includes misconduct falling within the following categories:

(A) Category I: Dishonesty: Includes untruthfulness, dishonesty by admission or omission, deception, misrepresentation, falsification;

(B) Category II: Disregard for the Rights of Others: Includes violating the constitutional or civil rights of others, and conduct demonstrating a disregard for the principles of fairness, respect for the rights of others, protecting vulnerable persons, and the fundamental duty to protect or serve the public.

(C) Category III: Misuse of Authority: Includes abuse of public trust, obtaining a benefit, avoidance of detriment, or harming another, and abuses under the color of office.

(D) Category IV: Gross Misconduct: Means an act or failure to act that creates a danger or risk to persons, property, or to the efficient operation of the agency, recognizable as a gross deviation from the standard of care that a reasonable public safety professional would observe in a similar circumstance;

(E) Category V: Misconduct: Misconduct includes conduct that violates the law, practices or standards generally followed in the Oregon public safety profession. By definition, all criminal convictions meet the definition of Misconduct within this category. NOTE: It is the intent of this rule that "Contempt of Court" meets the definition of Misconduct within this category; or

(F) Category VI: Insubordination: Includes a refusal by a public safety professional to comply with a rule or order, where the order was reasonably related to the orderly, efficient, or safe operation of the agency, and where the public safety professional's refusal to comply with the rule or order constitutes a substantial breach of that person's duties.

(c) For discretionary disqualifying misconduct, the applicable category will be determined based on the facts of each case. Discretionary disqualifying misconduct under (a)(C) includes, but is not limited to, the following list, which identifies the applicable category for each listed discretionary offense, based on the elements of the crime. NOTE: Those criminal

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convictions not listed below are presumptively considered Misconduct (Category V):

25.260 (Unlawful Disclosure of Confidential Records of Child Support Division) — Category II;  
162.405 (Official Misconduct in the Second Degree) — Category III;  
162.425 (Misuse of Confidential Information) — Category III;  
162.465 (Unlawful Legislative Lobbying) — Category I;  
163.160 (Assault in the Fourth Degree) — Category II;  
163.187 (Strangulation) — Category II;  
163.190 (Menacing) — Category II;  
163.195 (Recklessly Endangering Another Person) — Category IV;  
163.212 (Unlawful Use of Stun Gun, Tear Gas or Mace in the Second Degree) — Category IV;  
163.415 (Sexual Abuse in the Third Degree) — Category II;  
163.435 (Contributing to the Sexual Delinquency of a Minor) — Category II;  
163.445 (Sexual Misconduct) — Category II;  
163.465 (Public Indecency) — Category II;  
163.467 (Private Indecency) — Category II;  
163.545 (Child Neglect in the Second Degree) — Category IV;  
163.693 (Failure to Report Child Pornography) — Category IV;  
163.575 (Endangering the Welfare of a Minor) — Category III;  
163.700 (Invasion of Personal Privacy) — Category II;  
163.709 (Unlawful Directing of Light from a Laser Pointer) — Category IV;  
164.162 (Mail Theft or Receipt of Stolen Mail) — Category I;  
164.265 (Criminal Trespass While in Possession of a Firearm) — Category IV;  
164.272 (Unlawful Entry into a Motor Vehicle) — Category IV;  
164.335 (Reckless Burning) — Category IV;  
164.785 (Placing Offensive Substances in waters/on highways or property) — Category IV;  
164.845 (FTA on Summons for ORS 164.813 or 164.825) — Category IV;  
164.887 (Interference with Agricultural Operations) — Category II;  
165.540 (Obtaining Contents of Communications) — Category IV;  
165.570 (Improper Use of Emergency Reporting System) — Category IV;  
165.572 (Interference with Making a Report) — Category II;  
165.577 (Cellular Counterfeiting in the Third Degree) — Category I;  
165.805 (Misrepresentation of Age by a Minor) — Category I;  
166.025 (Disorderly Conduct in the Second Degree) — Category IV;  
166.027 (Disorderly Conduct in the First Degree) — Category IV;  
166.075 (Abuse of Venerated Objects) — Category II;  
166.076 (Abuse of a Memorial to the Dead) — Category II;  
166.090 (Telephonic Harassment) — Category II;  
166.095 (Misconduct with Emergency Telephone Calls) — Category IV;  
166.155 (Intimidation in the Second Degree) — Category II;  
166.180 (Negligently Wounding Another) — Category IV;  
166.190 (Pointing a Firearm at Another) — Category IV;  
166.240 (Carrying a Concealed Weapon) — Category IV;  
166.250 (Unlawful Possession of a Firearm) — Category IV;  
166.320 (Setting of a Springgun or Setgun) — Category IV;  
166.385 (Possession of Hoax Destructive Device) — Category IV;  
166.425 (Unlawful Purchase of Firearm) — Category I;  
166.427 (Register of Transfers of Used Firearms) — Category IV;  
166.480 (Sale or Gift of Explosives to Children) — Category IV;  
166.635 (Discharging Weapon or Throwing Object at Trains) — Category IV;  
166.638 (Discharging Weapon Across Airport Operational Surfaces) — Category IV;  
166.649 (Throwing Object off Overpass in the Second Degree) — Category IV;  
167.312 (Research and Animal Interference) — Category II;  
167.315 (Animal Abuse in the Second Degree) — Category IV;  
167.325 (Animal Neglect in the Second Degree) — Category IV;  
167.340 (Animal Abandonment) — Category IV;  
167.352 (Interfering with Assistance, Search and Rescue or Therapy Animal) — Category IV;  
167.385 (Unauthorized Use of Livestock Animal) — Category II;  
167.388 (Interference with Livestock Production) — Category II;  
167.808 (Unlawful Possession of Inhalants) — Category IV;  
167.810 (Creating a Hazard) — Category IV;  
167.822 (Improper Repair Vehicle Inflatable Restraint System) — Category IV;  
241.525 (Corrupt Practices) — Category III;  
Chapter 319 (Any Violation Involving a False Statement – Motor Vehicle and Aircraft Fuel Tax) — Category I;  
411.320 (Disclosure and Use of Public Assistance Records) — Category II;  
468.956 (Refusal to Produce Material Subpoenaed by the Commission) — Category IV;  
471.410 (Providing Liquor to Person under 21 or to Intoxicated Person) — Category IV;  
609.805 (Misrepresentation of Pedigree; Mutilation of Certificate or Proof of Pedigree) — Category I;  
609.990(3)(a) (Violation of ORS 609.098 — Maintaining a Dangerous Dog) — Category IV;  
632.470 (False Representation as to Raising, Production or Packaging) — Category I;  
632.475 (Possession of Unlabeled, Falsely Labeled or Deceptively Packed Products) — Category I;  
657.295 (Violation of Unemployment Insurance Witness Fees, Disputed Claims Expenses and Counsel Fees) — Category I;  
659.800 (Use of Force or Misrepresentation to Prevent Employment) — Category I;  
659.805 (Blacklisting and Blackmailing) — Category II;  
659.815 (Deceptive Representations or Advertisements by Persons Employing Labor) — Category I;  
659.845 (Fraudulently Accepting Advancement and Refusing to Work) — Category I;  
661.040 (Violation of Limitations of Fees Charged laborers by Collective Bargaining Agents) — Category I;  
661.260 (False Filing or Fraudulent Filing) — Category I;  
688.120 (Fraudulent Representation as a Physical Therapist or Physical Therapist Assistant) — Category I;  
731.260 (False or Misleading Filings; Insurance Code) — Category I;  
803.225 (Failure to Designate Replica Vehicle in Title or Registration Application) — Category I;  
807.430 (Misuse of Identification Card) — Category I;

807.510 (Transfer of documents for the purpose of misrepresentation) — Category I;  
807.530 (False Application for License) — Category I;  
807.580 (Using Invalid License) — Category I;  
807.590 (Permitting Misuse of License) — Category I;  
807.600 (Using Another's License) — Category I;  
811.060 (Vehicular Assault of Bicyclist or Pedestrian) — Category IV;  
811.140 (Reckless Driving) — Category IV;  
811.182 (Criminal Driving While Suspended or Revoked) — Category IV;  
811.231 (Reckless Endangerment of Highway Workers) — Category IV;  
811.540 (Fleeing or Attempt to Elude a Police Officer) — Category IV;  
811.700 (Failure to Perform Duties of Driver when Property is Damaged) — Category IV;  
811.740 (False Accident Report) — Category I;  
813.010 (Driving Under the Influence of Intoxicants) — Category IV;  
825.990(3)(d) (False Material Statement or Representation in any Application, Label, Manifest, Record, Report, Permit or Other Document Filed, Maintained or Used for Purposes of Compliance) — Category I;  
825.990(3)(e) (Failure to Include Material Information Required by Department of Transportation) — Category I;  
830.035(2) (Fleeing; Attempts to Elude) — Category IV;  
830.053 (False or Fraudulent Report of Theft of Boat) — Category I;  
830.315(1) (Reckless Operation) — Category IV;  
830.325 (Operate a Boat while Under the Influence of Intoxicating Liquor or Controlled Substance) — Category IV;  
830.475(1) (Failure to Perform the Duties of an Operator at Accident) — Category IV;  
830.730 (False Information) — Category I;  
830.994 (Operate a Boat in Violation of a Court Order) — Category IV;  
837.080 (Prohibited Operation of an Aircraft) — Category IV.

(d) Initial Periods of Ineligibility. Upon determination to proceed with the denial or revocation of a public safety professional's certification based on discretionary disqualifying misconduct identified in subsection (a), an initial minimum period of ineligibility to apply for certification will be determined based upon the category of misconduct (i.e., Dishonesty, Disregard for Rights of Others, Misuse of Authority, Gross Misconduct, Misconduct or Insubordination).

(e) Following review and recommendation by a Policy Committee, the Board will determine the initial minimum period of ineligibility for discretionary disqualifying misconduct identified in subsection (a) from the time frame identified below for each category of discretionary disqualifying misconduct:

- (A) Category I: Dishonesty (5 years to Lifetime).
- (B) Category II: Disregard for Rights of Others (5 years to 15 years).
- (C) Category III: Misuse of Authority (5 years to 10 years).
- (D) Category IV: Gross Misconduct (5 years to 10 years).
- (E) Category V: Misconduct (3 years to 7 years).
- (F) Category VI: Insubordination (3 years to 7 years).

(5) Eligibility to Reapply; Ineligibility Periods. A person is not eligible to reapply for training or certification if the person had training or certification denied or revoked for:

- (a) Mandatory grounds identified in section (3) of this rule; or
- (b) Discretionary Disqualifying Misconduct identified in section (4) of this rule that is determined to be a Category I lifetime disqualifier.

(6) Eligibility to reapply for certification:

(a) In determining the initial minimum period of ineligibility within any category for discretionary disqualifying misconduct listed in section (4) of this rule, the Board will take into consideration any mitigating or aggravating factors, subject to the provisions of section (9) of this rule.

(b) The initial minimum period of ineligibility will be included in any Final Order of the Department.

(c) Any subsequent eligibility to apply for certification will be determined by the Board, after Policy Committee review, subject to the provisions of section (11) of this rule.

(7) Guidelines for Denial or Revocation Based on Discretionary Disqualifying Misconduct. In determining whether to take action on a conviction, Standards and Certification must use the following guidelines:

(a) In making a decision on a discretionary denial or revocation, Standards and Certification will consider the implementation dates relating to new mandatory conviction notification requirements adopted in 2003 and statutory changes dealing with lifetime disqualifier convictions for public safety professionals adopted in 2001.

(b) Standards and Certification will not take action on a conviction constituting discretionary disqualifying misconduct that occurred prior to January 1, 2001. However, Standards and Certification may consider such conviction as evidence that a public safety professional does not meet the established moral fitness guidelines.

(c) Standards and Certification may take action on any conviction constituting discretionary disqualifying misconduct that occurred after January 1, 2001; however, crimes with a presumptive category of only Misconduct (Category V) may be appropriate for summary staff disposition or administrative closure if the conviction occurred seven years or more

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prior to the date of review and it represents the sole criminal conviction in the public safety professional's history.

(d) The Board may reconsider any mandatory conviction which subsequently becomes a conviction constituting discretionary disqualifying misconduct, upon the request of the public safety professional.

(e) The length of ineligibility for training or certification based on a conviction begins on the date of conviction.

(f) Standards and Certification will not take action against a public safety professional or agency for failing to report, prior to January 1, 2003, a conviction that constitutes discretionary disqualifying misconduct.

(g) Standards and Certification may take action against a public safety professional or agency for failing to report, after January 1, 2003, any conviction that constitutes discretionary disqualifying misconduct.

(8) Scope of Revocation. Whenever the Department revokes the certification of any public safety professional under the provisions of OAR 259-008-0070, the revocation will encompass all public safety certificates, except fire certification(s), the Department has issued to that person.

(9) Denial and Revocation Procedure.

(a) Agency Initiated Review: When the entity utilizing a public safety professional requests that a public safety professional's certification be denied or revoked, it must submit in writing to Standards and Certification the reason for the requested denial or revocation and all factual information supporting the request.

(b) Standards and Certification Initiated Review: Upon receipt of factual information from any source, and pursuant to ORS 181.662, Standards and Certification may request that the public safety professional's certification be denied or revoked.

(c) Standards and Certification Staff Review: When Standards and Certification receives information, from any source, that a public safety professional may not meet the established standards for Oregon public safety professionals, Standards and Certification will review the request and the supporting factual information to determine if the request for denial or revocation meets statutory and administrative rule requirements.

(A) If the reason for the request does not meet the statutory and administrative rule requirements for denial or revocation Standards and Certification will notify the requestor.

(B) If the reason for the request does meet statutory and administrative rule requirements but is not supported by adequate factual information, Standards and Certification will request further information from the employer or conduct its own investigation of the matter.

(C) If Standards and Certification determines that a public safety professional may have engaged in discretionary disqualifying misconduct listed in subsection (4), the case may be presented to the Board, through a Policy Committee.

(D) Standards and Certification will seek input from the affected public safety professional, allowing him or her to provide, in writing, information for the Policy Committee and Board's review.

(E) In misconduct cases where there has been an arbitrator's opinion related to the public safety professional's employment, Standards and Certification will proceed as follows:

(i) If the arbitrator's opinion finds that underlying facts supported the allegations of misconduct, Standards and Certification will proceed as identified in paragraphs (A) through (D) of this subsection.

(ii) If the arbitrator has ordered employment reinstatement after a discharge for cause without a finding related to whether the misconduct occurred, Standards and Certification will proceed as identified in paragraphs (A) through (D) of this subsection.

(iii) If the arbitrator's opinion finds that underlying facts did not support the allegation(s) of misconduct, Standards and Certification will proceed as identified in paragraph (A) of this subsection and administratively close the matter.

(d) Policy Committee and Board Review: In making a decision to authorize initiation of proceedings under subsection (e) of this rule, based on discretionary disqualifying misconduct, the Policy Committees and Board will consider mitigating and aggravating circumstances, including, but not limited to, the following:

(A) When the misconduct occurred in relation to the public safety professional's employment in public safety (i.e., before, during after);

(B) If the misconduct resulted in a conviction:

(i) Whether it was a misdemeanor or violation;

(ii) The date of the conviction(s);

(iii) Whether the public safety professional was a minor at the time and tried as an adult;

(iv) Whether the public safety professional served time in prison or jail and the length of incarceration;

(v) Whether restitution was ordered, and whether the public safety professional met all obligations;

(vi) Whether the public safety professional has ever been on parole or probation. If so, the date the parole or probation period expired or will expire; and

(vii) Whether the public safety professional has more than one conviction and over what period of time;

(C) Whether the public safety professional engaged in the same misconduct more than once and over what period of time;

(D) Whether the actions of the public safety professional reflect adversely on the profession or would cause a reasonable person to have substantial doubts about the public safety professional's honesty, fairness, respect for the rights of others, or for the laws of the state or the nation;

(E) Whether the misconduct involved domestic violence;

(F) Whether the public safety professional self-reported the misconduct;

(G) Whether the conduct adversely reflects on the fitness of the public safety professional to perform as a public safety professional;

(H) Whether the conduct renders the public safety professional otherwise unfit to perform their duties because the agency or public has lost confidence in the public safety professional; and

(I) What the public safety professional's physical or emotional condition was at the time of the conduct.

(e) Initiation of Proceedings: Upon determination that the reason for denial or revocation is supported by factual data meeting the statutory and administrative rule requirements, a contested case notice will be prepared and served on the public safety professional.

(f) Contested Case Notice:

(A) All contested case notices will be prepared in accordance with the applicable provisions of the Attorney General's Model Rules or 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 public safety professional prior to Board review. If the Board disapproves the policy committee's recommendation, the Department will withdraw the Contested Case Notice.

(g) 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 the "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 hearing with the Department.

(h) Default Order: If a timely request for a hearing is not received, the Contested Case Notice will become a final order denying or revoking certification pursuant to OAR 137-003-0672, pending Board affirmation.

(i) 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.

(j) Proposed and Final Orders:

(A) In cases in which 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 Procedures 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.

(k) Stipulated Order Revoking Certification: The Department may enter a stipulated order revoking the certification of a public safety professional 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.

(10) Appeal Procedure. A public safety professional, 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.

(11) Reapplication Process.

(a) Any public safety professional whose certification has been denied or revoked pursuant to section (4) of this rule, may reapply for certification within the applicable timeframes described in sections (4) through (6) of this rule. The initial minimum ineligibility period will begin on the date an Order of the Department denying or revoking certification becomes final.

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The initial minimum ineligibility period will cease when the applicable timeframe stated in the Order has been satisfied.

(b) Any public safety professional whose certification has been denied or revoked based on discretionary disqualifying misconduct may not reapply for certification until:

(A) The initial minimum period of ineligibility stated in an Order of the Department denying or revoking certification has been satisfied;

(i) If the initial period of ineligibility for the individual was for a period of less than the maximum period identified in section (4) of this rule, and the Board determines that an individual must remain ineligible to apply for certification, then the individual may not reapply for certification under the provisions of this rule until after the maximum initial period of ineligibility identified in (4) of this rule has been satisfied.

(ii) If the individual has satisfied the maximum initial period of ineligibility and the Board determines that an individual must remain ineligible to apply for certification, then the individual may not submit any further requests for an eligibility determination, and the original denial or revocation remains permanent.

(B) A written request for an eligibility determination has been submitted to the Department and a Policy Committee has recommended that a public safety professional's eligibility to apply for public safety or instructor certification be restored and the Board has upheld the recommendation;

(i) A request for an eligibility determination should include documentation or information that supports the public safety professional's request for eligibility to apply for certification.

(ii) In considering a request for an eligibility determination, the Policy Committee and the Board may consider mitigating and aggravating circumstances identified in Section 9(d) of this rule.

(iii) After reviewing a written request for an eligibility determination, the Board, through a Policy Committee, may determine that the individual's eligibility to apply for certification be restored if the criteria for certification have been met; or determine that the factors that originally resulted in denial or revocation have not been satisfactorily mitigated and the individual must remain ineligible to apply for certification.

(C) The public safety professional is employed or utilized by a public safety agency or the Department; and

(D) All requirements for certification have been met.

Stat. Auth.: ORS 181.640, 181.661, 181.662, 181.664 & 183.341

Stats. Implemented: ORS 181.640, 181.661, 181.662 & 181.664

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 2-1995, f. & cert. ef. 9-27-95; PS 2-1996, f. 5-15-96, cert. ef. 5-20-96; 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 6-2000, f. & cert. ef. 9-29-00; BPSST 14-2001(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. 7-5-02; BPSST 22-2002, f. & cert. ef. 11-18-02; DPSST 7-2003, f. & cert. ef. 4-11-03; DPSST 7-2004, f. & cert. ef. 4-23-04; DPSST 10-2006, f. & cert. ef. 7-6-06; DPSST 16-2008, f. & cert. ef. 10-15-08; DPSST 21-2008, f. & cert. ef. 12-15-08, cert. ef. 1-1-09; DPSST 11-2011, f. & cert. ef. 7-1-11; DPSST 11-2012, f. & cert. ef. 4-24-12; DPSST 19-2012, f. & cert. ef. 8-31-12; DPSST 22-2012, f. & cert. ef. 10-23-12; DPSST 26-2012(Temp), f. & cert. ef. 12-14-12 thru 6-12-13; DPSST 3-2013, f. & cert. ef. 1-22-13; DPSST 21-2013, f. & cert. ef. 9-23-13; DPSST 1-2014, f. & cert. ef. 1-2-14; DPSST 4-2014, f. & cert. ef. 1-28-14; DPSST 7-2014(Temp), f. & cert. ef. 2-27-14 thru 8-1-14; DPSST 16-2014, f. & cert. ef. 6-24-14

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## Department of Transportation Chapter 731

**Rule Caption:** Reduction of vehicle-carrying capacity on highways termed freight routes

**Adm. Order No.:** DOT 2-2014

**Filed with Sec. of State:** 7-10-2014

**Certified to be Effective:** 7-10-14

**Notice Publication Date:** 3-1-2014

**Rules Amended:** 731-012-0030

**Subject:** During rulemaking to establish a program involving reduction of vehicle-carrying capacity, a list of reduction review routes was adopted in 731-012-0030. A small section of highway was inadvertently left out of that list and this rulemaking corrects the error.

This rule amendment was originally filed with the Secretary of State April 23, 2014 and is being refiled to correct a filing error.

**Rules Coordinator:** Lauri Kunze—(503) 986-3171

### 731-012-0030

#### Reduction Review Routes

(1) The Department will establish a system of Reduction Review Routes for the purposes of the implementation of ORS 366.215. The

Reduction Review Routes will consist of the routes listed below. Reduction Review Routes include all parts of the state highway(s) that must be travelled to complete the prescribed route and/or connect with other state highways. This includes couplets and on and off ramps. [Table not included. See ED. NOTE.]

(2) The Reduction Review Routes will be added to the OHP policy section. After the Commission adopts this amendment, the OHP Reduction Review Routes subject to Commission jurisdiction will be used to implement this rule.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 184.616, 184.619 & 366.205

Stats. Implemented: ORS 366.215

Hist.: DOT 4-2013, f. & cert. ef. 8-26-13; DOT 1-2014, f. & cert. ef. 4-23-14; DOT 2-2014, f. & cert. ef. 7-10-14

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## Department of Transportation, Driver and Motor Vehicle Services Division Chapter 735

**Rule Caption:** Implements 2013 Legislation Relating to Odometer Readings

**Adm. Order No.:** DMV 5-2014

**Filed with Sec. of State:** 6-24-2014

**Certified to be Effective:** 6-24-14

**Notice Publication Date:** 5-1-2014

**Rules Adopted:** 735-028-0005

**Rules Amended:** 735-028-0000, 735-028-0040

**Subject:** Federal and state laws require a person transferring interest in a vehicle that is newer than 10 years to disclose the vehicle's mileage to the transferee at the time of the transfer. Vehicles 10 years old or older are exempt from this requirement.

Chapter 659, Oregon Laws 2013 amended ORS 803.200, ORS 803.102 and 803.120 to require DMV to:

1. Prescribe the manner and form in which a person may voluntarily provide an odometer reading to DMV for a vehicle 10 years old or older;

2. Capture odometer readings provided to DMV for vehicles 10 years old or older; and

3. Retain the most recent version of odometer records in electronic form.

OAR 735-028-0005 prescribes the manner and form in which a person may provide an odometer reading to DMV for a vehicle 10 years old or older. The amendment of 735-028-0000 and 735-028-0040 update terms and definitions to clarify the difference between an odometer disclosure required by federal and state law and a voluntary odometer reading.

In January 2014, DMV filed a temporary rulemaking because there was not enough time to complete the permanent rulemaking process to coincide with the April 1, 2014 implementation of the law. DMV has now permanently adopted and amended these rules. Other non-substantive changes were made for clarity and readability.

**Rules Coordinator:** Lauri Kunze—(503) 986-3171

### 735-028-0000

#### Definitions Relating to Odometer Disclosures and Voluntary Odometer Readings

As used in OAR 735-028-0000 through 735-028-0100 the following terms apply:

(1) "Actual Mileage" means the distance a vehicle has traveled while in operation.

(2) "Buyer" refers to the transferee as defined in ORS 803.102 and 49 CFR, Part 580 for the purpose of odometer disclosure.

(3) "DMV" means the Driver and Motor Vehicle Services Division of the Oregon Department of Transportation.

(4) "Seller" has the same meaning as "transferor" as that term is defined in ORS 803.102 and 49 CFR, Part 580 for the purpose of odometer disclosure.

(5) "Odometer" means a device on a motor vehicle for recording the accumulated total mileage a vehicle has been driven. It does not include a device designed to be reset to zero by the operator for purposes of recording trip mileage.

(6) "Odometer Reading" means the mileage indicated on the odometer, excluding any tenths of a mile or kilometer.

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(7) "Odometer Disclosure" is a written statement required by state or federal law upon a transfer of an interest in motor vehicle, which contains:

(a) A vehicle description, the odometer reading and a certification as to whether, to the best of the person's knowledge, the reading reflects the actual mileage, mileage in excess of the designed mechanical limit or does not reflect actual mileage; and

(b) Depending on the type of transaction, any other information required by rule to be on the disclosure.

(8) "Conforming Title" means a certificate of title or salvage title issued by any state, which contains spaces for odometer information required by 49 CFR, Part 580. Any Oregon title or salvage title issued on or after January 1, 1992, is a conforming title.

(9) "Nonconforming Title" means a certificate of title issued by any state that does not contain spaces for odometer information required under 49 CFR, Part 580. Any Oregon title issued prior to January 1, 1992, is a nonconforming title.

(10) "Secure Form" refers to an odometer disclosure and reassignment form or a power of attorney form that includes odometer information, issued by DMV or another jurisdiction that meets or exceeds federal requirements on form and content. The forms incorporate security features to deter and detect counterfeiting or unauthorized reproduction, and make alterations visible to the naked eye.

(11) "Voluntary odometer reading" is an odometer reading provided to DMV on a voluntary basis in connection with a title transaction for a vehicle that is 10 years old or older as provided for under Section 1, Chapter 659, Oregon Laws 2013.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 802.200, 803.015, 803.045, 803.050, 803.065, 803.092, 803.094, 803.097, 803.102, 803.120, 803.122, 803.124, 803.126, 803.140, 803.207, 803.370, 803.475, 805.120, 815.405, 821.060, 821.080 and Ch. 659, OL 2013  
Stats. Implemented: ORS 803.120 - 803.126, Ch. 659, OL 2013 and 49 CFR Part 580  
Hist.: MV 23-1985, f. 12-31-85, ef. 1-1-86; MV 29-1987, f. & ef. 10-1-87; Administrative Renumbering 3-1988, Renumbered from 735-110-0400; MV 8-1992, f. 6-30-92, cert. ef. 7-1-92; DMV 1-2014(Temp), f. 3-25-14, cert. ef. 4-1-14 thru 9-28-14; DMV 5-2014, f. & cert. ef. 6-24-14

## 735-028-0005

### Voluntary Odometer Reading for a Vehicle that is 10 Years Old or Older

The purpose of this rule is to prescribe the manner in which a person may provide a voluntary odometer reading to DMV for a vehicle that is 10 years old or older as required by section 1, chapter 659, Oregon Laws 2013.

(1) A voluntary odometer reading as defined under OAR 735-028-0000(11):

(a) Must be provided on a document submitted to DMV in connection with a title transaction. For example, an application for title, a vehicle title, salvage title or a document approved by DMV for providing an odometer disclosure;

(b) Must include the date of the reading or the date the reading was received by DMV;

(c) Must include the following to be recorded on the vehicle record and title or salvage title:

(A) A reading greater than zero; or

(B) A reading of zero or greater, if provided with an odometer message as described in subsection (d) of this Section.

(d) May include an odometer message that states to the best of the knowledge of the person providing the reading that:

(A) The mileage stated is in excess of the odometer's mechanical limits;

(B) The reading does not reflect the actual mileage; or

(C) The odometer is not readable.

(e) Does not constitute an endorsement by DMV as to the accuracy, completeness, reliability or usefulness of the odometer reading, odometer message or the date of the reading.

(2) DMV will not attempt to verify the mileage reported for a voluntary odometer reading.

(3) A person who provides a voluntary odometer reading to DMV is not subject to the certification requirements for an odometer disclosure required under ORS 803.102, 49 CFR, Part 580 or DMV rules.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 802.200, 803.102, 803.120 & 2013 OL Ch. 659  
Stats. Implemented: ORS 803.102, 803.120 & 2013 OL Ch. 659  
Hist.: DMV 1-2014(Temp), f. 3-25-14, cert. ef. 4-1-14 thru 9-28-14; DMV 5-2014, f. & cert. ef. 6-24-14

## 735-028-0040

### Odometer Readings in Connection with an Odometer Disclosure

This rule establishes when and what DMV will record on an Oregon title or salvage title upon receipt of an odometer disclosure required by federal or state law.

(1) DMV will record on the title or salvage title the odometer reading and date disclosed upon a transfer of interest on the title or salvage title, if the transfer is subject to odometer disclosure requirements by statute or rule.

(2) Except as provided by section (3) of this rule, the odometer reading recorded on a title or salvage title shall be the most recent version received by DMV on a disclosure accompanying the title transaction.

(3) DMV may record an odometer reading other than the reading from the most recent disclosure when:

(a) The most recent disclosure is missing required information;

(b) DMV has reason to believe the odometer reading on the most recent disclosure is not accurate; or

(c) A request for a title correction is submitted to DMV to correct an erroneous odometer reading as provided under section (7) of this rule.

(4) If the transfer of interest is not subject to odometer disclosure requirements (e.g., removing a security interest holder), DMV will record:

(a) The mileage disclosed by the owner, if the owner makes a disclosure at the time of transfer; or

(b) The mileage shown on the previous title or salvage title, if the owner does not make a disclosure or the transfer involves a replacement title.

(5) If DMV accepts an application without a disclosure from the seller, as provided under OAR 735-028-0090, DMV will record the mileage disclosed by the buyer.

(6) The odometer disclosure date recorded on the title or salvage title shall be the date the disclosure is made. If DMV is unable to determine the date the disclosure is made, the date shall be the date the application was processed in DMV's local offices, or, if received by mail, the date the application was received.

(7) DMV may correct an odometer reading recorded on a title or salvage title if a request for title correction is submitted to DMV:

(a) Within 90 days of the date the title was issued and before any subsequent transfer of interest; if the buyer or seller disclosed incorrect mileage at the time of transfer; or

(b) More than 90 days after the title was issued and before a subsequent transfer of interest requiring an odometer disclosure, if:

(A) DMV recorded the mileage or date incorrectly; or

(B) The request for title correction includes evidence satisfactory to DMV that the disclosure was made in error. Examples of evidence include a prior odometer disclosure made by the owner or a vehicle service record, or similar document that shows the date of service and odometer reading.

(8) DMV will not correct an odometer reading or date recorded on the title when questions concerning odometer disclosure arise and the title or salvage title is not subject to correction under section (4) of this rule, but may add the notation that the odometer reading is "not actual."

(9) When an odometer disclosure received by DMV indicates the odometer reading does not reflect the actual mileage, exceeds the mechanical limits of the odometer, or the odometer on a salvage titled vehicle is not readable, DMV will record one of the following odometer messages on the title or salvage title:

(a) "Exceeds mechanical limits," if the odometer disclosure indicates the odometer reading is in excess of the mechanical limits of the odometer;

(b) "Not actual," if the odometer disclosure indicates the odometer reading does not reflect the actual mileage. "Not actual" will be recorded if "not actual" and any other message both apply. "Not actual" also may be recorded on the title if the odometer reading disclosed at transfer is less than a previously disclosed odometer reading, whether or not "not actual" is indicated on any odometer disclosure received by DMV;

(c) "Not readable," if the vehicle has been destroyed, the odometer removed, or it otherwise is impossible to read the odometer of the vehicle because of damage to the vehicle or the odometer.

(10) DMV may, at its discretion, record any odometer message on a title or salvage title it believes appropriate if it has reason to believe:

(a) The odometer reading does not reflect the actual mileage; or

(b) The odometer reading reflects mileage in excess of the mechanical limits of the odometer.

(11) When a title or salvage title is submitted in support of an application for Oregon title, and the title contains a message not described under section (9) of this rule, DMV will record on the Oregon title — if issued — an odometer message DMV determines most accurately reflects the message on the title submitted with the application or the actual mileage of the vehicle.

(12) If the message "not readable" is recorded on an Oregon title or salvage title and the odometer is later repaired or replaced and can't be reset to actual mileage, the message "not actual" will be recorded on the title.

# ADMINISTRATIVE RULES

Stat. Auth.: ORS 802.010, 802.200, 803.015, 803.045, 803.050, 803.065, 803.092, 803.094, 803.097, 803.102, 803.120, 803.122, 803.124, 803.126, 803.140, 803.207, 803.370, 803.475, 805.120, 815.405, 821.060 & 821.080  
Stats. Implemented: ORS 803.015, 49 CFR Part 58  
Hist.: MV 8-1992, f. 6-30-92, cert. ef. 7-1-92; MV 18-1992, f. 12-21-92, cert. ef. 1-1-93; DMV 1-2014(Temp), f. 3-25-14, cert. ef. 4-1-14 thru 9-28-14; DMV 5-2014, f. & cert. ef. 6-24-14

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**Rule Caption:** Implements 2013 Legislation Relating to Odometer Readings

**Adm. Order No.:** DMV 6-2014

**Filed with Sec. of State:** 7-9-2014

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**Notice Publication Date:** 5-1-2014

**Rules Adopted:** 735-028-0005

**Rules Amended:** 735-028-0000, 735-028-0040

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1. Prescribe the manner and form in which a person may voluntarily provide an odometer reading to DMV for a vehicle 10 years old or older;

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In January 2014, DMV filed a temporary rulemaking because there was not enough time to complete the permanent rulemaking process to coincide with the April 1, 2014 implementation of the law. DMV has now permanently adopted and amended these rules. Other non-substantive changes were made for clarity and readability.

These rules were originally filed with the Secretary of State on June 24, 2014 and are being refiled to correct a filing error.

**Rules Coordinator:** Lauri Kunze—(503) 986-3171

## 735-028-0000

### Definitions Relating to Odometer Disclosures and Voluntary Odometer Readings

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(1) "Actual Mileage" means the distance a vehicle has traveled while in operation.

(2) "Buyer" refers to the transferee as defined in ORS 803.102 and 49 CFR, Part 580 for the purpose of odometer disclosure.

(3) "DMV" means the Driver and Motor Vehicle Services Division of the Oregon Department of Transportation.

(4) "Seller" has the same meaning as "transferor" as that term is defined in ORS 803.102 and 49 CFR, Part 580 for the purpose of odometer disclosure.

(5) "Odometer" means a device on a motor vehicle for recording the accumulated total mileage a vehicle has been driven. It does not include a device designed to be reset to zero by the operator for purposes of recording trip mileage.

(6) "Odometer Reading" means the mileage indicated on the odometer, excluding any tenths of a mile or kilometer.

(7) "Odometer Disclosure" is a written statement required by state or federal law upon a transfer of an interest in motor vehicle, which contains:

(a) A vehicle description, the odometer reading and a certification as to whether, to the best of the person's knowledge, the reading reflects the actual mileage, mileage in excess of the designed mechanical limit or does not reflect actual mileage; and

(b) Depending on the type of transaction, any other information required by rule to be on the disclosure.

(8) "Conforming Title" means a certificate of title or salvage title issued by any state, which contains spaces for odometer information required by 49 CFR, Part 580. Any Oregon title or salvage title issued on or after January 1, 1992, is a conforming title.

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(10) "Secure Form" refers to an odometer disclosure and reassignment form or a power of attorney form that includes odometer information, issued by DMV or another jurisdiction that meets or exceeds federal requirements on form and content. The forms incorporate security features to deter and detect counterfeiting or unauthorized reproduction, and make alterations visible to the naked eye.

(11) "Voluntary odometer reading" is an odometer reading provided to DMV on a voluntary basis in connection with a title transaction for a vehicle that is 10 years old or older as provided for under Section 1, Chapter 659, Oregon Laws 2013.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 802.200, 803.015, 803.045, 803.050, 803.065, 803.092, 803.094, 803.097, 803.102, 803.120, 803.122, 803.124, 803.126, 803.140, 803.207, 803.370, 803.475, 805.120, 815.405, 821.060, 821.080 & 2013 OL Ch. 659

Stats. Implemented: ORS 803.120 - 803.126, Ch. 659, OL 2013 & 49 CFR Part 580

Hist.: MV 23-1985, f. 12-31-85, ef. 1-1-86; MV 29-1987, f. & ef. 10-1-87; Administrative Renumbering 3-1988, Renumbered from 735-110-0400; MV 8-1992, f. 6-30-92, cert. ef. 7-1-92; DMV 1-2014(Temp), f. 3-25-14, cert. ef. 4-1-14 thru 9-28-14; DMV 5-2014, f. & cert. ef. 6-24-14; DMV 6-2014, f. & cert. ef. 7-9-14

## 735-028-0005

### Voluntary Odometer Reading for a Vehicle that is 10 Years Old or Older

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(1) A voluntary odometer reading as defined under OAR 735-028-0000(11):

(a) Must be provided on a document submitted to DMV in connection with a title transaction. For example, an application for title, a vehicle title, salvage title or a document approved by DMV for providing an odometer disclosure;

(b) Must include the date of the reading or the date the reading was received by DMV;

(c) Must include the following to be recorded on the vehicle record and title or salvage title:

(A) A reading greater than zero; or

(B) A reading of zero or greater, if provided with an odometer message as described in subsection (d) of this Section.

(d) May include an odometer message that states to the best of the knowledge of the person providing the reading that:

(A) The mileage stated is in excess of the odometer's mechanical limits;

(B) The reading does not reflect the actual mileage; or

(C) The odometer is not readable.

(e) Does not constitute an endorsement by DMV as to the accuracy, completeness, reliability or usefulness of the odometer reading, odometer message or the date of the reading.

(2) DMV will not attempt to verify the mileage reported for a voluntary odometer reading.

(3) A person who provides a voluntary odometer reading to DMV is not subject to the certification requirements for an odometer disclosure required under ORS 803.102, 49 CFR, Part 580 or DMV rules.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 802.200, 803.102, 803.120 & 2013 OL Ch. 659

Stats. Implemented: ORS 803.102, 803.120 & 2013 OL Ch. 659

Hist.: DMV 1-2014(Temp), f. 3-25-14, cert. ef. 4-1-14 thru 9-28-14; DMV 5-2014, f. & cert. ef. 6-24-14; DMV 6-2014, f. & cert. ef. 7-9-14

## 735-028-0040

### Odometer Readings in Connection with an Odometer Disclosure

This rule establishes when and what DMV will record on an Oregon title or salvage title upon receipt of an odometer disclosure required by federal or state law.

(1) DMV will record on the title or salvage title the odometer reading and date disclosed upon a transfer of interest on the title or salvage title, if the transfer is subject to odometer disclosure requirements by statute or rule.

(2) Except as provided by section (3) of this rule, the odometer reading recorded on a title or salvage title shall be the most recent version received by DMV on a disclosure accompanying the title transaction.

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## Department of Transportation, Highway Division Chapter 734

(3) DMV may record an odometer reading other than the reading from the most recent disclosure when:

(a) The most recent disclosure is missing required information;

(b) DMV has reason to believe the odometer reading on the most recent disclosure is not accurate; or

(c) A request for a title correction is submitted to DMV to correct an erroneous odometer reading as provided under section (7) of this rule.

(4) If the transfer of interest is not subject to odometer disclosure requirements (e.g., removing a security interest holder), DMV will record:

(a) The mileage disclosed by the owner, if the owner makes a disclosure at the time of transfer; or

(b) The mileage shown on the previous title or salvage title, if the owner does not make a disclosure or the transfer involves a replacement title.

(5) If DMV accepts an application without a disclosure from the seller, as provided under OAR 735-028-0090, DMV will record the mileage disclosed by the buyer.

(6) The odometer disclosure date recorded on the title or salvage title shall be the date the disclosure is made. If DMV is unable to determine the date the disclosure is made, the date shall be the date the application was processed in DMV's local offices, or, if received by mail, the date the application was received.

(7) DMV may correct an odometer reading recorded on a title or salvage title if a request for title correction is submitted to DMV:

(a) Within 90 days of the date the title was issued and before any subsequent transfer of interest; if the buyer or seller disclosed incorrect mileage at the time of transfer; or

(b) More than 90 days after the title was issued and before a subsequent transfer of interest requiring an odometer disclosure, if:

(A) DMV recorded the mileage or date incorrectly; or

(B) The request for title correction includes evidence satisfactory to DMV that the disclosure was made in error. Examples of evidence include a prior odometer disclosure made by the owner or a vehicle service record, or similar document that shows the date of service and odometer reading.

(8) DMV will not correct an odometer reading or date recorded on the title when questions concerning odometer disclosure arise and the title or salvage title is not subject to correction under section (4) of this rule, but may add the notation that the odometer reading is "not actual."

(9) When an odometer disclosure received by DMV indicates the odometer reading does not reflect the actual mileage, exceeds the mechanical limits of the odometer, or the odometer on a salvage titled vehicle is not readable, DMV will record one of the following odometer messages on the title or salvage title:

(a) "Exceeds mechanical limits," if the odometer disclosure indicates the odometer reading is in excess of the mechanical limits of the odometer;

(b) "Not actual," if the odometer disclosure indicates the odometer reading does not reflect the actual mileage. "Not actual" will be recorded if "not actual" and any other message both apply. "Not actual" also may be recorded on the title if the odometer reading disclosed at transfer is less than a previously disclosed odometer reading, whether or not "not actual" is indicated on any odometer disclosure received by DMV;

(c) "Not readable," if the vehicle has been destroyed, the odometer removed, or it otherwise is impossible to read the odometer of the vehicle because of damage to the vehicle or the odometer.

(10) DMV may, at its discretion, record any odometer message on a title or salvage title it believes appropriate if it has reason to believe:

(a) The odometer reading does not reflect the actual mileage; or

(b) The odometer reading reflects mileage in excess of the mechanical limits of the odometer.

(11) When a title or salvage title is submitted in support of an application for Oregon title, and the title contains a message not described under section (9) of this rule, DMV will record on the Oregon title — if issued — an odometer message DMV determines most accurately reflects the message on the title submitted with the application or the actual mileage of the vehicle.

(12) If the message "not readable" is recorded on an Oregon title or salvage title and the odometer is later repaired or replaced and can't be reset to actual mileage, the message "not actual" will be recorded on the title.

Stat. Auth.: ORS 802.010, 802.200, 803.015, 803.045, 803.050, 803.065, 803.092, 803.094, 803.097, 803.102, 803.120, 803.122, 803.124, 803.126, 803.140, 803.207, 803.370, 803.475, 805.120, 815.405, 821.060, 821.080

Stats. Implemented: ORS 803.015, 49 CFR Part 580

Hist.: MV 8-1992, f. 6-30-92, cert. ef. 7-1-92; MV 18-1992, f. 12-21-92, cert. ef. 1-1-93; DMV 1-2014(Temp), f. 3-25-14, cert. ef. 4-1-14 thru 9-28-14; DMV 5-2014, f. & cert. ef. 6-24-14; DMV 6-2014, f. & cert. ef. 7-9-14

**Rule Caption:** Highway Approach Permitting, Access Control, and Access Management Standards

**Adm. Order No.:** HWD 2-2014

**Filed with Sec. of State:** 6-25-2014

**Certified to be Effective:** 6-30-14

**Notice Publication Date:** 5-1-2014

**Rules Adopted:** 734-051-1065, 734-051-3015

**Rules Amended:** 734-051-1030, 734-051-1040, 734-051-1070, 734-051-2010, 734-051-2020, 734-051-3010, 734-051-3020, 734-051-3040, 734-051-3050, 734-051-3060, 734-051-3070, 734-051-4020, 734-051-5060, 734-051-5120, 734-051-7010

**Rules Repealed:** 734-051-8010(T), 734-051-8015(T), 734-051-8020(T), 734-051-8025(T), 734-051-8030(T)

**Subject:** The 2013 Oregon legislature substantially changed the authorization for how the Oregon Department of Transportation issues permits for access to state highways. OAR 734-051-5120 and 7010 were rewritten in their entirety to comply with the new statutes and OAR 734-051-3015 was added to address new areas of law pertaining to existing approaches that the department may deem to have provided written permission. In addition, the rules include revisions that correct errors, update references, and improve clarity.

The department adopted temporary rules in December 2013 to implement SB 408. These rules replace the temporary rules.

**Rules Coordinator:** Lauri Kunze—(503) 986-3171

### 734-051-1030

#### Administration of Rules

(1) Approaches Subject to division 51. Private approaches in existence and applications for private approaches filed after June 30, 2014 are governed by the rules of division 51. Public approaches do not require an Approach Permit but are subject to the provisions of OAR 734-051-1050.

(2) Grandfathered Approaches. division 51 rules do not affect existing rights of owners of grandfathered approaches that meet the definition in OAR 734-051-1070(30), except where the rules specifically state their application to grandfathered approaches, such as the rule for changes of use of an approach under 734-051-3020. An approach no longer qualifies as grandfathered once the department issues a Permit to Operate under division 51 rules or the department acquires access control as defined under 734-051-1070.

(3) Compliance with Land Use Requirements. Approval of a property for a particular use is the responsibility of city, county, or other governmental agencies, and an applicant must obtain appropriate approval from city, county, or other governmental agencies having authority to regulate land use. Approval of an application for an approach to a state highway, or issuance of a construction permit or a Permit to Operate for the same, is not a finding of compliance with statewide planning goals or an acknowledged comprehensive plan.

(4) General Requirements for Notices of Appealable Decisions and Other Written Communication. The department will provide notice of appealable decisions by certified mail to the applicant. Notice of non-appealable decisions and other written communication will be by first class mail, unless written agreement is made with the applicant for such communication through electronic means such as email.

(5) Reasonable Access. Pursuant to ORS 374.310, the division 51 rules may not be exercised so as to deny any property that has a right of access reasonable access to the highway. 374.312 authorizes adoption of rules establishing criteria for reasonable access consistent with 374.310. The rules under OAR 734-051-4020 address reasonable access solely in the context of the issuance of approach permits and do not affect whether access may be reasonable for other purposes or under other reviews.

Stat. Auth.: ORS 184.616, 184.619, 374.310-374.314, 374.345 & 374.355

Stats. Implemented: ORS 374.300-374.360, §27, 2011 OL Ch. 330

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12; HWD 2-2014, f. 6-25-14, cert. ef. 6-30-14

### 734-051-1040

#### Relationship to Local Jurisdiction Rules and Regulations

(1) Where ODOT and Local Jurisdiction Agree on Standards or Requirements. Where ODOT and a local jurisdiction have agreed to access spacing standards, sight distance standards or channelization requirements

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in an adopted facility plan that is different than the adopted standards in this rule, the agreed upon standard will be considered consistent with the standards adopted by this rule and with OAR 660-012-0015 and shall be applied to the state highways within that jurisdiction.

(2) Where Local Jurisdiction Standards or Requirements Exceed OAR 734-051. Where a local jurisdiction has adopted access spacing standards, sight distance standards or channelization requirements that are more stringent than the standards adopted by these rules or allow less access to the state highway than the standards adopted in these rules, the local standards shall be considered to be consistent with the state standards and with 660-012-0015 and shall be applied to state highways within that jurisdiction.

(3) Where OAR 734-051 Exceeds Local Jurisdiction Standards or Requirements. Where a local jurisdiction has adopted access spacing standards, sight distance standards or channelization requirements that are less stringent than the standards adopted by these rules or provide greater access to the state highway than those standards adopted by these rules, the local standards shall be deemed to be inconsistent with these rules and with 660-012-0015 and shall not be applied to state highways within the local jurisdiction.

Stat. Auth.: ORS 184.616, 184.619, 374.310-374.314, 374.345 & 374.355  
Stats. Implemented: ORS 374.300-374.360, §27, Ch. 330, OL 2011  
Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12; HWD 2-2014, f. 6-25-14, cert. ef. 6-30-14

## 734-051-1065

### Restriction of Turning Movements for Existing Private Approaches

(1) Applicability. The department may restrict turning movements onto a state highway from an approach for which a permit was issued under OAR 734-051-3010 or that is deemed to have written permission under 734-051-3015 when the restriction is not required by contract, condemnation judgment, recorded deed or a Permit to Operate.

(2) Procedures and Circumstances

(a) The department may restrict turning movements under this rule for circumstances that include the following:

(A) Safety and highway operations concerns set forth in OAR 734-051-4020(3); or

(B) To prevent roadway departure crashes, particularly head-on type crashes and sideswipe meeting type crashes; or

(C) Where drainage facilities are required in the median of the highway; or

(D) To provide a two-stage or multi-stage pedestrian and/or bicycle crossing; or

(E) Pursuant to local government projects and land use decisions.

(b) When the department is evaluating the need to restrict turning movements under this rule, the department shall engage the following:

(A) Owners of property abutting the highway that will be affected by the restriction;

(B) Property lessees and business operators abutting the highway that will be affected by the restriction;

(C) The local jurisdiction with land use authority in the area of the restriction;

(D) A representative of the freight industry; and

(E) Other stakeholders as appropriate.

(c) Prior to implementing a turning restriction, the department will provide written notification to the parties listed in (a) of its decision to implement the restriction.

(d) A non-traversable median may not be used as mitigation for an approach road permit unless the department first establishes that no other measures will be effective for the circumstances.

Stat. Auth.: ORS 184.616, 184.619, 374.310-374.314, 374.345 & 374.355

Stats. Implemented: ORS 374.345 & 374.312

Hist.: HWD 2-2014, f. 6-25-14, cert. ef. 6-30-14

## 734-051-1070

### Definitions

(1) "Access Control" means that the right of access between a property abutting the highway and the highway has been acquired by the department or eliminated by law.

(2) "Access Management Strategy" means a project delivery strategy developed by the Department of Transportation, in collaboration with cities, counties and owners of real property abutting a state highway in the affected area, that identifies the location and type of public and private approaches and other necessary improvements that are planned to occur primarily in the highway right of way and that are intended to improve current conditions on the section of highway by moving in the direction of the

objective standards described in ORS 374.311, subject to safety and highway operations concerns.

(3) "Access Management Plan" means a facility plan adopted by the Oregon Transportation Commission in coordination with affected local governments for managing access on a designated section of highway or within the influence area of an interchange. An access management plan may establish a unique access plan and access management standards for the designated section of highway or influence area of an interchange, and may be more stringent than standards adopted under OAR 734-051-4020. It may be developed independent of or in conjunction with a highway or interchange project; however, an access management plan is not a highway or interchange project.

(4) "Alternate Access" means the right to access a property by means other than the proposed approach. It may include an existing public right of way, another location on the subject state highway, an easement across adjoining property, a different highway, a service road, a local road, or an alley, and may be in the form of a single or joint approach. The existence of alternate access is not a determination that the alternate access is "reasonable" as defined in ORS 374.310.

(5) "Annual average daily traffic" means highway traffic volumes as reported in the most recent edition of the transportation volume tables published annually by the department.

(6) "Appealable decision" means a final decision by the department where the applicant has a right to a dispute resolution procedure to review the department's decision as set forth in OAR 734-051-3080 through 3110. The following are appealable decisions:

(a) A decision to deny an application for an approach permit;

(b) A decision to deny an application for a deviation from approach permitting standards;

(c) A decision to impose mitigation measures as a condition of approval of an approach application or as a condition of approval of a deviation from the general approval criteria set forth in OAR 734-051-4020(2);

(d) A decision to remove a connection for which the department has issued a Permit to Operate or written permission as grandfathered, or which the department deems to have written permission as set forth in OAR 734-051-3015.

(7) "Applicant" means a person, corporation, or other legal entity with a legal property interest, including a lease, option or reservation of access, to land abutting the highway that applies for an approach permit or a deviation from approach permitting standards, or their designated agent.

(8) "Application" means a completed application form for state highway approach including any required documentation and attachments necessary for the department to determine if the application can be deemed complete.

(9) "Approach" means a legally constructed public or private connection that provides vehicular access to or from a state highway that:

(a) Has written permission under a Permit to Operate issued by the department under OAR 734-051-3010; or

(b) The department has recognized as grandfathered under OAR 734-051-1070(29); or

(c) The department does not rebut as having a presumption of written permission under OAR 734-051-3015.

(10) "Average Daily Trips" means the total of all one-direction vehicle movements with either the origin or destination inside the study site that includes existing, primary, pass by, and diverted linked trips and is calculated in accordance with the procedures contained in Trip Generation Manual, 9th Edition published by the Institute of Transportation Engineers (ITE). Adjustments to the standard rates in the ITE Manual for mode split may be allowed if calculated in accordance with Transportation Planning Rule and the ITE procedures. Adjustments to the standard rates for multi-use internal site trips may be allowed if calculated in accordance with ITE procedures and if the internal trips do not add vehicle movements to the approaches to the highway.

(11) "Channelization" means the roadway lane configuration necessary to safely accommodate turning movements from the highway to an intersecting approach.

(12) "Classification of highways" means the department's state highway classifications defined in the Oregon Highway Plan.

(13) "Commission" means the Oregon Transportation Commission.

(14) "Connection" means an existing approach as defined in (9) or an unpermitted means of vehicular access to or from a state highway and an abutting private property, city street or county road.

(15) "Construction Permit" means a permit to construct or modify a state highway approach including all attachments, required signatures, and conditions and terms.

## ADMINISTRATIVE RULES

(16) "Crash history" means at least the three most recent years of crash data recorded by the department's crash analysis and reporting unit.

(17) "Day" means calendar day, unless specifically stated otherwise.

(18) "Deemed complete" means acknowledgement by the department that it has received all required information from the applicant for a complete application for an approach permit or for a request for a deviation from approach permit standards.

(19) "Department" or "ODOT" means the Oregon Department of Transportation.

(20) "Deviation" means an exception from the access management spacing, sight distance or channelization standards set forth in OAR 734-051-4020.

(21) "Director" means the director of the Oregon Department of Transportation.

(22) "District highway" means a state highway that has been classified by the commission as a district highway in the Oregon Highway Plan.

(23) "Division 51" ("this division") means Oregon Administrative Rules (OAR) 734-051-1010 through 734-051-7010.

(24) "Expressway" means a state highway that has been designated by the commission as an expressway in the Oregon Highway Plan.

(25) "Facility Plan" means a plan developed by the department for a state highway facility, including but not limited to corridor facility plans, and transportation refinement plans.

(26) "Fair Market Value" means the amount in cash, or on terms reasonably equivalent to cash, for which in all probability the property would be sold by a knowledgeable owner willing but not obligated to sell to a knowledgeable purchaser who desired but is not obligated to buy.

(27) "Freeway" means a route or segment of highway that is completely access controlled and access limited to grade separated interchanges.

(28) "Freeway or Expressway ramp" means all types, arrangements, and sizes of turning roadways that connect to a freeway or expressway interchange.

(29) "Functional Area of an Intersection" means the intersection and the area beyond the intersection that comprises decision and maneuver distance, plus any required vehicle storage length.

(30) "Grandfathered approach" means an approach that the department has recognized in documentation dated prior to January 1, 2014 as having grandfathered status under the rules in effect on the date of the documentation. An approach that is recognized as having grandfathered status is treated in the same manner as a Permit to Operate under division 51 rules unless otherwise noted.

(31) "Grant of Access" means the conveyance of a right of access from the department to an abutting property owner.

(32) "Highway mobility standards" mean the performance standards for maintaining mobility as adopted by the commission in the Oregon Highway Plan.

(33) "Highway peak hour" means the highest one-hour volume observed on an urban roadway during a typical or average week, or the thirtieth (30th) highest hourly traffic volume on a rural roadway typically observed during a year.

(34) "Highway designation" means a designation made by the Oregon Transportation Commission to a defined route or segment that is in addition to highway classification and that modifies the system management goals for the designated part of the highway. Highway designations include but are not limited to expressways, freight routes, special transportation areas, scenic routes and lifelines.

(35) "Indenture of Access" means a deeded conveyance to the abutting property owner to change the location, width, or use restrictions of a reservation of access. Removal of a farm crossing or farm use restriction from a reservation of access requires a grant of access.

(36) "Infill" ("Infill Development") means development of vacant or remnant land passed over by previous development and that is consistent with zoning. Infill occurs in urban areas. It may also occur in rural areas on commercial or industrial zoned land where the land has been developed into an urban block pattern including a local street network, and the posted highway speed is at or below forty-five (45) miles per hour.

(37) "Influence area of an interchange" means the area 1,320 feet from an interchange ramp terminal measured on the crossroad away from the mainline.

(38) "Interchange" means a system of interconnecting roadways in conjunction with one or more grade separations that provides for the movement of traffic between two or more roadways or highways on different levels.

(39) "Intersection" means an at-grade connection of a public or private road to the highway.

(40) "Interstate highway" means a state highway that has been classified by the commission as an interstate highway in the Oregon Highway Plan.

(41) "Land Use Action" means an action by a local government or special district concerning the adoption, amendment or application of the statewide planning goals, a comprehensive plan provision or a land use regulation including zoning, development or subdivision codes.

(42) "Land Use Regulations" means local jurisdiction zoning and development codes, including regulation of land use, zoning, subdivisions, land partitions, access, site plans, and similar regulations adopted pursuant to ORS 197, for cities, and ORS 215, for counties.

(43) "Median" means the portion of the roadway separating opposing traffic streams.

(44) "Mitigation Measure" means an improvement, modification, or restriction set forth in OAR 734-051-3070 and required by the department or initiated by an applicant necessary to offset impacts of the development and provide for safe operation of the highway and proposed approach. Mitigation measures may be a condition of approval for a deviation from approach permitting standards or an application for an approach permit.

(45) "Move in the direction of" means a change in an existing private connection that would bring the connection closer to conformity with access spacing, sight distance, or channelization standards set forth in OAR 734-051-4020. The process and criteria for moving in the direction of access spacing, sight distance, or channelization standards are set forth in 734-051-3020(7) through (11).

(46) "Oregon Highway Plan" means the Oregon Highway Plan adopted by the Oregon Transportation Commission, pursuant to ORS 184.618.

(47) "Peak hour", for the purpose of approach applications made under OAR 734-051-3020 (Change of Use), means the hour during which the highest volume of traffic enters and exits the property during a typical week.

(48) "Permit to Construct" means a permit that is issued by the department that includes all attachments, required signatures, conditions and terms, and any bond and insurance documentation provided by the applicant as required by the department to construct or modify an approach and any related mitigation within the state highway right of way.

(49) "Permit to Operate" means written permission issued by the department to operate, maintain and use an approach to the state highway, including all required signatures and attachments, and conditions and terms. A Permit to Operate is not required for a public approach but the department may issue a Permit to Operate for a public approach upon agreement with the governing city or county.

(50) "Permittee" means a person, corporation, or other legal entity holding a valid Permit to Operate including the owner or lessee of the property abutting the highway or their designated agent.

(51) "Permitted approach" means a legally constructed approach connecting to a state highway for which the department has issued a valid Permit to Operate.

(52) "Planned" road or street means a highway, road, street or alley identified in an adopted corridor plan, comprehensive plan or transportation system plan in accordance with administrative procedures of OAR 660-012 and ORS Chapter 197 but has not been constructed.

(53) "Posted speed" means the statutory speed established by ORS 811.105 or 811.180, or the designated speed established by 810.180.

(54) "Prior use" of an approach means the number of peak hour or average daily trips:

(a) Authorized by the Permit to Operate issued by the department; or

(b) Authorized by the department for a grandfathered approach in the documentation recognizing the approach as grandfathered; or

(c) Based on the use of the property on January 1, 2014 for approaches that the department does not rebut as having a presumption of written permission under OAR 734-051-3015.

(55) "Private approach" means an approach that serves one or more properties and that is not a public approach.

(56) "Private road crossing" means a privately owned road designed for use by trucks that are prohibited by law from using state highways, county roads or other public highways.

(57) "Professional Engineer," for the purpose of OAR 734-051, means a person who is registered and holds a valid license to practice engineering in the State of Oregon, as provided in ORS 672.002 through 672.325 and OAR 820-001 through 820-040.

# ADMINISTRATIVE RULES

(58) "Project Delivery" means the process of programming, designing and constructing modernization and highway improvement projects identified in the Statewide Transportation Improvement Program.

(59) "Public approach" means an existing or planned city street or county road connection that provides vehicular access to and from a highway. An existing city street or county road connection must be under the authority of the city or county to be considered a public approach. A planned city street or county road must be consistent with OAR 731-051-1070(52), included as part of a corridor plan, local transportation system plan or comprehensive plan, and must be or come under the authority of the city or county to be considered a public approach.

(60) "Receipt of an application" means the date the department date-stamps an application as received.

(61) "Redevelopment" ("Infill Redevelopment") means the act or process of changing an existing development including replacement, remodeling, or reuse of existing structures to accommodate new development that is consistent with current zoning. Redevelopment occurs in urban areas. It may also occur in rural areas on commercial or industrial zoned land where the land has been developed into an urban block pattern including a local street network, and the posted highway speed is at or below forty-five (45) miles per hour.

(62) "Region Access Management Engineer" means a professional engineer employed by the department who by training and experience has comprehensive knowledge of the department's access management rules, policies, and procedures, or a professional engineer as specified in an inter-governmental agreement delegating permitting authority as set forth in OAR 734-051-1060.

(63) "Region Manager" means the person in charge of one of the department's Transportation Regions or designated representative.

(64) "Regional highway" means a state highway that has been classified by the commission as a regional highway in the Oregon Highway Plan.

(65) "Reservation of Access" means a right of access to a specific location in an area where the department has acquired access control subject to restrictions that are designated in a deed. A reservation of access may include a use restriction limiting the right of access to a specified use or restriction against a specified use. A reservation of access affords the right to apply for an approach but does not guarantee approval of an application for state highway approach or the location of an approach.

(66) "Right of access" means the property right of an abutting property owner to ingress and egress to the roadway. A right of access includes a common law right of access, or may be conveyed through operation of law or by deed as a reservation of access, or grant of access.

(67) "Right of way" means real property or an interest in real property owned by the department for the purpose of constructing, operating and maintaining public transportation facilities.

(68) "Rule, this" ("this rule") means the part of OAR 734, division 51, as designated by the four-digit suffix, in which the reference to "this rule" appears. For example, this rule ("Definitions") is 734-051-1070.

(69) "Rural" means the area outside the urban growth boundary, the area outside a Special Transportation Area in an unincorporated community, or the area outside an Urban Unincorporated Community defined in OAR 660-022-0010.

(70) "Sight distance" means a length of highway that a driver can see with an acceptable level of clarity.

(71) "Signature" means the signature of each property owner or the authorized agent of the corporation.

(72) "Spacing standards" means the access management spacing standards set forth in OAR 734-051-4020.

(73) "Special Use Approach" means an approach that is intended to provide vehicular access for a specific use and for a limited volume of traffic. Such uses are determined by the department and may include emergency services, government, and utility uses. Mitigation required as a part of an approach permit approval or a condition on a construction permit does not by itself create a "special use approach."

(74) "State highway" means a highway that is under the jurisdiction of the Oregon Department of Transportation.

(75) "Statewide highway" means a state highway that has been classified by the commission as a statewide highway in the Oregon Highway Plan.

(76) "Temporary approach" means an approach that is constructed, maintained, and operated for a specified period of time not exceeding two years, and removed at the end of that period of time.

(77) "Traffic Impact Analysis" means a report prepared by a professional engineer that analyzes existing and future roadway conditions.

(78) "Trip" means a one-way vehicular movement that consists of a motor vehicle entering or exiting a property.

(79) "Unincorporated community" means a settlement that is not incorporated as a city and that lies outside the urban growth boundary of any city.

(80) "Urban" means the area within the urban growth boundary, within a Special Transportation Area of an unincorporated community, or within an Urban Unincorporated Community defined in OAR 660-022-0010.

(81) "Vehicular Access" means the location where motorized vehicles move to and/or from a street, roadway, highway or alley and an abutting property.

(82) "Workday" means Monday through Friday and excludes holidays and days state offices are closed.

Stat. Auth.: ORS 184.616, 184.619, 374.310-374.314, 374.345, 374.355

Stats. Implemented: ORS 374.300-374.360, §27, ch. 330, OL 2011

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12; HWD 2-2014, f. 6-25-14, cert. ef. 6-30-14

## 734-051-2010

### General Provisions

(1) Right of Access Required for Private Approach. In order for the department to approve an application requesting a private approach, the property for which application is made must have a right of access to the state highway as defined in OAR 734-051-1070. A right of access or a recorded easement establishing a right of access does not guarantee approval of an approach permit. Where no right of access exists, an application for a grant of access must be submitted before an application for state highway approach will be deemed complete. The department will not approve a grant of access where an application for approach permit cannot be approved.

(2) Right of Access Required for Public Approach. Where no right of access exists, a local jurisdiction must submit an application for a grant of access with its application to construct a public approach. The department will not approve a grant of access where an application to construct a public approach cannot be approved.

(3) Request to Verify Right of Access. Upon request, the department shall verify whether a property abutting the state highway has a right of access and identify any restrictions or limitations of the right.

(4) Removal of Farm Use Restrictions. Removing a farm crossing or farm use restriction from a reservation of access requires a grant of access from the department.

Stat. Auth.: ORS 184.616, 184.619, 374.310-374.314, 374.345 & 374.355

Stats. Implemented: ORS 374.300-374.360, §27, ch. 330, OL 2011

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12; HWD 2-2014, f. 6-25-14, cert. ef. 6-30-14

## 734-051-2020

### Grants of Access

(1) Grant of Access. The department may approve an application for a grant of access only when the provisions in sections (2) through (6) below are fully complied with.

(2) Restricted Areas.

(a) The department shall not approve an application for a grant of access for a private approach:

- (A) On an interstate highway or freeway ramp;
- (B) On an expressway or expressway ramp;
- (C) Opposite a freeway or expressway ramp terminal; or
- (D) In the influence area of an interchange.

(b) The department shall not approve an application for a grant of access for a public approach on a freeway, freeway ramp, or an expressway ramp.

(c) The department shall not approve an application for a grant of access to serve a public approach aligned opposite a freeway or expressway ramp or within the influence area of an interchange unless the public approach is included in an interchange area management or facility plan approved by the ODOT chief engineer and adopted by the commission.

(3) Criteria for Grant of Access for a Private Approach. The department may approve an application for a grant of access where all of the following conditions are met:

(a) An applicant submits an application for state highway approach, as set forth in OAR 734-051-3010 through 734-051-3030, with its application for a grant of access, as set forth by this rule;

(b) The applicant meets the requirements for issuance for a construction permit, as set forth in OAR 734-051-5020;

(c) The applicant agrees in writing to meet any mitigation measures, terms, and conditions placed on the approval of the grant of access, construction permit and the Permit to Operate;

# ADMINISTRATIVE RULES

(d) One of the following in (A) or (B) occurs:

(A) The department determines that access control is no longer needed at the location specified in the application for a grant of access as set forth in section (5) of this rule; or

(B) The applicant establishes that the grant of access will benefit the state highway system as set forth in OAR 734-051-4030;

(e) Alternate access to the property is not and cannot be made reasonable pursuant to sections (6) and (7) of OAR 734-051-4020;

(f) The property owner must agree to deed restrictions that ensure that future development intensity and trip generation can be safely accommodated by the state transportation system; and

(g) The technical services manager approves an application for a grant of access.

(4) Criteria for Grant of Access for a Public Approach. The department may approve an application for a grant of access for a public approach to a state highway where all of the following conditions are met:

(a) A local jurisdiction submits an application for a grant of access, as set forth in sections (6) through (8) of this rule;

(b) The grant of access is consistent with the Oregon Highway Plan and a local transportation system plan; or, in the absence of a transportation system plan, a grant of access may be considered where the local jurisdiction has explored all practicable alternatives to the connection, including parallel streets and the purchase of additional right of way;

(c) One of the following occurs:

(A) The department determines that access control is no longer needed at the location specified in the application for a grant of access as set forth in section (5) of this rule; or

(B) The local jurisdiction provides sufficient evidence for the department to establish that the grant of access will benefit the state highway system as set forth in (i) or (ii) below:

(i) The proposed connection is a public facility with a functional classification of collector or higher and is identified in an adopted transportation system plan consistent with OAR 660-012-0000 through 660-012-0070; or

(ii) The technical services manager determines that the grant of access will provide a benefit to the state highway pursuant to OAR 734-051-4030.

(d) The department and the local jurisdiction requesting a grant of access for a public approach:

(A) Shall enter into an intergovernmental agreement, as set forth in OAR 734-051-1050, that details the responsibility for construction, maintenance, operation, mitigation measures and cost of the public approach; and

(B) May enter into an intergovernmental agreement that addresses transportation plan and land use amendments or modifications to ensure that trip generation and traffic operations from planned development can be safely supported on the state transportation system.

(5) Factors to Determine if Access Control is Still Needed. For the purposes of determining whether access control is still needed, per subsections (3)(d)(A) and (4)(c)(A) of this rule, at the proposed location for a grant of access, the department shall consider factors including but not limited to those in (a) through (g):

(a) Classification of the highways and highway designations;

(b) Spacing standards;

(c) Highway mobility standards;

(d) State and local transportation system plans;

(e) Comprehensive plan and land uses in the area;

(f) Safety and operational factors; and

(g) Sight distance standards.

(6) Applicant for Grant of Access. The applicant for a grant of access must be the owner of the property abutting the highway right of way or the owner's designated agent.

(7) Complete Application for Grant of Access. A complete application for grant of access to a state highway consists of a completed and signed standard state form, a complete application for a state highway approach, including all required documentation, deposit toward processing fee for a grant of access pursuant to this rule, and a current preliminary title report covering the property to be served by the approach, showing any access easements appurtenant to the property; the department shall not process an application for grant of access that is incomplete.

(8) Fees and Deposit Toward Processing Fee. The applicant shall pay all costs incurred by the department in processing the application for a grant of access. An initial deposit to cover the processing fee is required for an application for a grant of access. The total or final processing fee is based on the actual documented costs incurred by the department plus a ten (10) percent charge for general administration:

(a) The department shall determine the amount of the initial deposit based on the complexity of the request and the anticipated cost of obtaining an appraisal of the grant of access;

(b) The initial deposit is applied towards the total or final processing fee; and

(c) The total or final processing fee includes the cost to secure an appraisal of the fair market value of the grant of access.

(9) Review Process. Upon acceptance of an application for grant of access and any required documentation, the department shall evaluate the application pursuant to division 51, ORS Chapter 374, and any other applicable state statutes, administrative rules, and department manuals for evaluating and acting upon the application for a grant of access, and shall:

(a) Forward the application for grant of access to the state traffic engineer for processing pursuant to section (10) of this rule; or

(b) Based on the applicable rules, statutes, or department manuals, deny the application for grant of access.

(10) Review by State Traffic Engineer. When the application for grant of access is forwarded to the state traffic engineer, the state traffic engineer, with the assistance of department staff, shall:

(a) Evaluate the application for grant of access;

(b) Notify the applicant of any additional information required; and

(c) Make a recommendation to approve or deny the application for a grant of access to the technical services manager and the technical services manager shall conditionally approve or deny the application for grant of access subject to identified conditions of approval, and payment of the appraised value. The technical services manager shall provide written notification of the conditional decision to the applicant.

(11) Appraisal. If the application for grant of access is conditionally approved, the department shall:

(a) Appraise the abutting property to determine the fair market value of the grant of access;

(b) Notify the applicant of the value of the grant of access; and

(c) Provide the applicant with instructions for payment.

(12) Payment for Grant of Access. Except as provided by section (13) of this rule, upon approval of an application for a grant of access and prior to issuance of the deed of the grant of access, payment must be made to the department in an amount equal to the appraised value of the grant of access; this payment is in addition to the processing fee.

(13) Waiver of Payment. The department may waive payment of the appraised value of the grant of access when an application for a grant of access is for a public approach and the department has determined that the public approach will cause a direct and immediate benefit the state highway system as set forth in OAR 734-051-4030.

(14) Execution and Recording. After payment of fair market value is received by the department:

(a) The grant of access will be executed and recorded; and

(b) A copy of the grant of access will be sent to the region manager so that a construction permit may be issued in accordance with OAR 734-051-5020 for a private approach and 734-051-1050 for a public approach.

Stat. Auth.: ORS 184.616, 184.619, 374.310-374.314, 374.345 & 374.355

Stats. Implemented: ORS 374.300-374.360, §27, ch. 330, OL 2011

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12; HWD 2-2014, f. 6-25-14, cert. ef. 6-30-14

## 734-051-3010

### Permit for Private Approach

(1) Applicability. This rule applies to applications for state highway approach permits for private approaches.

(2) Restricted Areas. The department shall not issue an approach permit to a freeway, a freeway ramp, or an expressway ramp, or an approach that would be aligned opposite a freeway or expressway ramp terminal.

(3) Rules in Effect. An application for an approach permit shall be subject to the rules in effect on the date the application was filed. The department shall use OAR 734, division 51, and ORS 374, and may use other applicable statutes or administrative rules to evaluate and act on an application.

(4) Approach Permit Approval Criteria. The department shall approve an application for an approach based upon a determination that it meets all of the following criteria:

(a) The department determines that a complete application has been submitted pursuant to OAR 734-051-3030;

(b) The department determines that the application is consistent with any applicable facility plans adopted by the Oregon Transportation Commission, including special transportation area plans, facility plans, corridor plans;

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(c) Except where paragraphs (A) through (D) of this subsection apply, the department determines that the proposed approach meets the spacing, channelization and sight distance standards of OAR 734-051-4020, or the department approves a deviation from these standards under 734-051-3050 which may include mitigation measures pursuant to 734-051-3070;

(A) OAR 734-051-3020 applies to applications for change of use of a private approach.

(B) OAR 734-051-4020(5) applies to applications for properties with no alternate access.

(C) OAR 734-051-4040 applies to applications for temporary approaches.

(D) OAR 734-051-4050 applies to applications for special use approaches.

(d) The department determines that the approach does not create or contribute to a safety or highway operations concern, as identified in OAR 734-051-4020(3), or such concerns are sufficiently mitigated pursuant to OAR 734-051-3070.

(5) Cooperative Improvement Agreement. A written agreement between the applicant and the department may be required. The agreement will address transfer of ownership of the improvements to ODOT, work standards that must be followed, any maintenance responsibilities of the applicant, and other requirements that apply to the work. ODOT may withhold issuance of a Permit to Construct under 734-051-5020 or a Permit to Operate, Maintain, and Use an Approach under 734-051-5080 until the agreement is fully executed by all parties. ODOT will work with the applicant to identify the need and develop the provisions for the agreement early in the permitting process in order to avoid delays in obtaining permits.

Stat. Auth.: ORS 184.616, 184.619, 374.310-374.314, 374.345 & 374.355

Stats. Implemented: ORS 374.300-374.360, §27, ch. 330, OL 2011

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12; HWD 2-2014, f. 6-25-14, cert. ef. 6-30-14

## 734-051-3015

### Presumption of Written Permission for an Existing Private Connection

(1) Applicability. This rule applies to those existing private connections for which the department has not:

(a) Issued a Permit to Operate in accordance with OAR 734-051-3010 (Permit for Private Approach); or

(b) Issued a Permit to Operate under section (3) of this rule; or

(c) Issued documentation recognizing the connection as grandfathered under OAR 734-051-1070 (Definitions).

(2) Presumption of Written Permission.

(a) An owner of real property abutting a state highway with a connection to a state highway that existed on January 1, 2014 is presumed to have the Department of Transportation's written permission for the connection based upon documentation for a highway project completed by the department that shows that the connection was built or rebuilt as part of a highway project or that the department intended to issue an approach permit to the property owner for the connection.

(b) An owner of real property abutting a state highway with a connection that was in existence before April 1, 2000, is also presumed to have the department's written permission for the connection based upon documentation in any form that shows:

(A) That the connection was in existence before July 16, 1949; or

(B) That the connection was in existence before the department accepted jurisdiction of the highway from a city or county; or

(C) That the connection was built or rebuilt to the abutting property with the department's knowledge or permission.

(c) There is no presumption of written permission under this rule where there is not a right of access to the state highway as defined in OAR 734-051-1070 (Definitions).

(d) Connections presumed to have written permission under this section are subject to OAR 734-051-3020 (Change of Use of a Private Connection) as set forth in section 4 of this rule.

(e) An owner of real property with a connection presumed to have written permission under this section is responsible for the cost and performance of maintaining the connection in accordance with OAR 734-051-5090 (Maintenance of Approaches).

(f) The department may rebut that an existing connection has a presumption of written permission under section 7 of this rule.

(3) Issuance of a Permit to Operate. The department may issue a Permit to Operate for a connection that it does not rebut as having a presumption of written permission if a change of use has not occurred as set forth in OAR 734-051-3020.

(4) New Application Required for Change of Use. Connections deemed to have a presumption of written permission under section 2 of this rule are subject to the requirements and procedures for change of use as set forth in OAR 734-051-3020.

(a) If the department determines that the connection meets one of more of the criteria for a change of use as set forth in 3020(2), the property owner is required to submit a new application for all approaches to the property as set forth in OAR 734-051-3020(1) and 734-051-3030 (Application Requirements for State Highway Approach).

(b) For the purposes of OAR 734-051-3020(2)(a) and (b), prior use is the use of the property on January 1, 2014. For the purposes of OAR 734-051-3020(2)(c), the increase in daily use of a connection by vehicles with a gross vehicle weight rating of twenty-six thousand (26,000) pounds or greater is based on the use of the connection on January 1, 2014.

(5) Removal of a Connection. If the department intends to remove a connection that it does not rebut as having a presumption of written permission, the department shall provide notification as set forth in 734-051-5110(2) and the removal shall be subject to the post-decision review processes of 734-051-3080 through 3110 and remedies as set forth in OAR 734-051-6010 through 6070.

(6) Connections Located on Open Frontage. Open frontage refers to a large open area along the highway right of way where the location for entry to or exit from an abutting property is not clearly defined. For the purposes of sections 2 and 3 of this rule, the department shall determine the location and dimensions of the connection within open frontage that it deems to have provided written permission in collaboration with the property owner(s) and, where possible, the property lessees and business operators. The department shall consider the land use served by the connection on January 1, 2014 and the current standards of the Oregon Highway Design Manual.

(7) Department Rebuttal of a Presumption of Written Permission.

(a) The department shall have the burden to establish that the factual basis for a presumption of written permission under sections (2)(a) and (b) of this rule does not exist.

(b) The department may rebut the presumptions of written permission by establishing the following:

(A) A search of department as-constructed plans for highway projects where the connection is located do not show a note to build or rebuild the connection as part of a project; and

(B) Neither the department nor the property owner have written documentation indicating that ODOT approved issuance of a permit to construct or a Permit to Operate for the connection; and

(C) For connections that existed prior to April 1, 2000:

(i) Photographic evidence or other historical documentation indicates that the connection was established after July 16, 1949; and

(ii) Photographic evidence or other historical documentation indicates that the connection did not exist before the date that the department accepted jurisdiction of the highway; and

(iii) Written documentation from the department to the property owner dated prior to January 1, 2014 indicates that construction of the connection was not authorized or that the connection is no longer authorized by the department for the reasons specified in the documentation.

(c) If the department establishes that an existing connection does not have the presumption of written permission under this rule, then:

(A) The connection is subject to removal or reconstruction as provided in ORS 374.307 and the property owner is not entitled to file a claim for relief under OAR 734-051-6010; and

(B) The department shall not offer an administrative remedy under OAR 734-051-6020 through 6070.

Stat. Auth.: ORS 184.616, 184.619, 374.310-374.314, 374.345 & 374.355

Stats. Implemented: ORS 374.300-374.360, §27, ch. 330, OL 2011

Hist.: HWD 2-2014, f. 6-25-14, cert. ef. 6-30-14

## 734-051-3020

### Change of Use of a Private Connection

(1) Applicability.

(a) This rule sets forth procedures and requirements for a change of use of an existing private connection to a state highway.

(b) A new application is required for the purpose of permitting all connections to a property when there is a change of use as set forth in section (2) of this rule. All connections to the property are subject to this rule whether they exist under a Permit to Operate, are grandfathered under OAR 734-051-1070(29), or the department provides written permission under OAR 734-051-3015.

# ADMINISTRATIVE RULES

(2) Changes of Use Requiring an Application for State Highway Approach. Except as provided under section (5) of this rule, a new application is required for a change of use when any one of the following:

(a) The number of peak hour trips increases by fifty (50) trips or more from that of the property's prior use and the increase represents a twenty (20) percent or greater increase in the number of peak hour trips from that of the property's prior use; or

(b) The average daily trips increases by five hundred (500) trips or more from that of the property's prior use and the increase represents a twenty (20) percent or greater increase in the average daily trips from that of the property's prior use; or

(c) The daily use of a connection increases by ten (10) or more vehicles with a gross vehicle weight rating of twenty-six thousand (26,000) pounds or greater; or

(d) ODOT demonstrates that safety or operational concerns related to the connection are occurring as identified in OAR 734-051-4020(3); or

(e) The connection does not meet the stopping sight distance standards, as measured in feet, of ten (10) times the speed limit established in ORS 811.111 or the designated speed posted under ORS 810.180 for the highway as measured in miles per hour, or ten (10) times the 85th percentile speed of the highway where the 85th percentile speed is higher or lower than the speed limit established in ORS 811.111 or the designated speed posted under ORS 810.180. The sight distance measurement, as described in OAR 734-051-4020(2)(c)(A)-(B), and the study to determine the 85th percentile speed shall be performed according to published department procedures by or under the supervision of a professional engineer as defined in OAR 734-051-1070. The measurement shall be taken under existing and proposed site conditions.

(3) Mandatory Meeting. Unless waived by the department, a meeting between ODOT staff and the applicant is required for a change of use application prior to the department deeming the application complete. It is preferable that the meeting be held prior to submittal of the change of use application.

(4) Determinations of Change of Use. The department shall determine whether a change of use meets the thresholds in section (2) of this rule by using one or more of the following methods:

(a) Field counts;

(b) Site observation;

(c) Traffic impact analysis;

(d) Field measurement;

(e) Crash history;

(f) Trip Generation, 9th Edition published by the Institute of Transportation Engineers (ITE); or

(g) Information and studies provided by the local jurisdiction or the applicant.

(5) Exempt from Application for Change of Use. Buildout of an approved site plan or multi-phased development does not require a new application for an approach road permit where the department determines that the buildout is consistent with the land use approval by the local government and the permit issued by the department for development.

(6) Approval Criteria. The department shall approve an application for a state highway approach that does not pose a safety or highway operations concern, as set forth in OAR 734-051-4020(3), or all such concerns are sufficiently mitigated pursuant to OAR 734-051-3070, and:

(a) The application meets the applicable approach road spacing, channelization and sight distance standards set forth in OAR 734-051-4020(2)(a) through (c); or

(b) The department and the applicant reach agreement that the application moves in the direction of conforming to approach road spacing, channelization, and sight distance standards under sections (7) through (9) of this rule; or

(c) The applicant and the department reach agreement under section (6)(b) that the existing condition without change is sufficient to support approval of an application.

(7) Moving in the Direction of Conformity Collaborative Process. The department and applicant, through a collaborative process, shall determine whether an application moves in the direction of conforming to the spacing, channelization or sight distance standards subject to safety and operations concerns. The collaborative process shall be made available to the applicant within thirty (30) days of the date an application for state highway approach is deemed complete.

(8) Criteria for Moving in the Direction of Conformity. In determining whether an application for a private approach to a state highway moves in the direction of conformity with the spacing, channelization and sight distance standards of OAR 734-051-4020, the department shall consider all connections on the subject site. An application moves in the direction of conformity with OAR 734-051-4020 when changes are made to a connection that include, but are not limited to, one or more of the following:

(a) Eliminating or combining existing connections to the highway resulting in a net reduction in the number of connections; or

(b) Improving the distance between connections; or

(c) Improving sight distance; or

(d) Widening an existing connection to accommodate truck turning radius requirements; or

(e) Widening an existing connection to accommodate additional exit lanes; or

(f) Narrowing an existing connection to provide the appropriate number of entry and exit lanes as required for the property; or

(g) Developing a throat on a connection to allow for more efficient movement of motorists from the highway.

(9) Agreement. Where the department and applicant agree that a change of use application moves in the direction of conforming to spacing, channelization, and sight distance standards, the department shall approve the application without requiring separate deviations from those standards. The department, upon completion of the terms of agreement, shall issue a Permit to Operate for all approaches that are to remain operational as identified in the agreement. An agreement to remove, modify, or mitigate a connection pursuant to the agreement between the department and the applicant is not an appealable decision.

(10) Where Agreement is Not Reached.

(a) If, after participating in a collaborative process pursuant to section (7) of this rule, the applicant and the department cannot agree that an application is moving in the direction of conformity pursuant to sections (8) and (9) of this rule, the region manager shall document the issues of agreement and non-agreement with the applicant through a written statement of non-agreement. The applicant may then request further collaboration on the issues of non-agreement under OAR 734-051-3090, sections (1) through (3), and/or a review by the Dispute Review Board under 734-051-3100.

(b) Where agreement cannot be reached under the processes of subsection (a) of this section, the department may require additional information to complete the application and make a decision pursuant to the standards of OAR 734-051-4020 and issue a final decision to approve, deny, or approve with mitigation, consistent with the procedures in 734-051-3030 and 3040. The department's decision to deny or approve with mitigation applications under the standards of 734-051-4020 are subject to post-decision review under 734-051-3080.

(11) Connections Not Subject to Moving in the Direction of Conformity Criteria. Notwithstanding sections (6) through (8) above, the "moving in the direction of" criteria as set forth in section (8) of this rule shall not be applied to the connections in subsections (a) through (f), below. For these connections, the department shall apply the standards of OAR 734-051-4020 to approve, deny, or approve with mitigation the application, consistent with the procedures in 734-051-3040.

(a) Connections where no right of access to the property exists at the location of the connection, and an application for a grant of access or indenture of access is not approved;

(b) Connections to undeveloped property without an approved site plan or land use approval allowing for development of the property;

(c) Connections for which the department rebuts a presumption of written permission under OAR 734-051-3015;

(d) Connections to property abutting a highway segment with a statewide classification and a posted speed of 50 miles per hour or greater;

(e) Connections to property abutting a highway segment designated as an expressway; and

(f) Connections to property within the boundaries of an adopted facility plan, or corridor plan, where the connection is inconsistent with the plan, and the planned component for the access to the property has been constructed or is funded to be constructed within four years at the time of the application.

Stat. Auth.: ORS 184.616, 184.619, 374.310-374.314, 374.345 & 374.355

Stats. Implemented: ORS 374.300-374.360, §27, ch. 330, OL 2011

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 7-2012(Temp), f. & cert. ef. 5-3-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12; HWD 2-2014, f. 6-25-14, cert. ef. 6-30-14

# ADMINISTRATIVE RULES

## 734-051-3040

### Private Approach Permit Application Review, Approvals and Timelines

(1) Complete Application Required. The department shall not process an application for state highway approach that is incomplete or contains insufficient information for the department to find that it meets the submittal requirements of OAR 734-051-3030.

(2) Notice of Completeness Determination. Upon receiving an application for state highway approach, the department shall determine and provide written notification about whether the application is complete within thirty (30) days of its receipt of the application. Where the department determines that an application for state highway approach is not complete, (a) through (e) apply:

(a) The 120-day timeline under OAR 734-051-3040(4) does not begin until the application is deemed complete as defined in OAR 734-051-1070(18);

(b) The department shall notify the applicant in writing when an application is incomplete within the timeframes required by this rule;

(c) The department notice shall provide specific information on what is needed to make the application complete;

(d) The department notice shall indicate that the application must be made complete within sixty (60) days of the date of the department notice, at which time the application expires unless the department and applicant agree to an extension; and

(e) Where an application is deemed incomplete because no right of access exists at the proposed approach location, the department notice shall provide information on how to apply for a grant of access or an indenture of access, as applicable.

(3) On-Site Reviews. The department in reviewing an application for completeness may conduct an on-site review to determine the need for supplemental documentation in accordance with (a) through (c) as follows:

(a) The on-site review area includes both sides of the highway in the vicinity of the proposed approach, including the site frontage, existing connections, and public intersections;

(b) The department may notify the applicant of an on-site review to be conducted, and may invite the applicant to meet on-site to answer questions and discuss the review; and

(c) Any on-site meeting between department representatives and the applicant shall be limited to clarifying the applicant's proposal and identifying any supplemental documentation needed to meet application requirements.

(4) Decision Timeline and Final Decision Within 120-Days of Complete Application. Except as provided in section (7), the department shall make its final decision, including resolution of all internal appeals, to grant or deny an approach permit within one hundred twenty (120) days of the date the department deems an application for state highway approach complete. The 120-day timeline breaks down as follows:

(a) The department shall make its decision to approve, approve with mitigation, or deny an application within thirty (30) days of the date that the department determines the application to be complete, where the proposal meets the applicable spacing, channelization and sight distance standards of OAR 734-051-4020; or

(b) The department shall make its decision to approve, approve with mitigation, or deny an application within sixty (60) days of the date that the department determines the application to be complete for all other applications.

(c) The final sixty (60) days of the one hundred twenty (120) days are reserved for the contested case hearing procedures of OAR 734-051-3110, except where the timeline is extended pursuant to section (7) of this rule.

(5) General Directives Applicable to Approach Permit Decisions. The directives in (a) through (e), as follows, apply to the department's review of all applications for state highway approach:

(a) Except for highways classified as interstate highways and highways designated as expressways by the commission, and except as provided by subsection (b) of this section, the department may not use the presence of alternate access to a property abutting a highway as a basis for denying an application for state highway approach.

(b) In rural areas, the department shall consider the presence of alternative access in determining whether to approve or deny a second or subsequent application for state highway approach.

(c) Mobility standards, established by the department, are not applicable to turning movements from private approaches during the department's review of an approach permit application, except when the ratio of volume to capacity on the proposed private approach is (one-point-zero) 1.0 or greater.

(d) The department shall utilize a professional engineer with relevant experience to review and respond to evidence from a qualified expert that is submitted by the applicant.

(e) The city or county, and persons that own property adjacent to the proposed approach, shall be allowed to express concerns about the application prior to the issuance of the permit.

(f) Where the development includes multiple parcels, the development is evaluated in its entirety, regardless of the number of individual parcels or ownership contained within the development, and applications will not be processed for individual parcels or ownership.

(6) Notice of Pending Denial or Approval with Mitigation. When the department proposes to deny an approach or approve an approach with mitigation, it shall notify the applicant of its intent and offer the applicant a pre-decision collaborative process, pursuant to OAR 734-051-3060, to discuss the department's and the applicant's positions. Upon conclusion of this collaborative process or if the applicant declines the offer of this collaborative process, the department shall issue its decision in writing, including sufficient specificity regarding the access management standards and/or safety or operations concerns upon which the department's decision is based.

(7) Extension of Timelines. The timelines of division 51 may be extended pursuant to (a) through (c) below:

(a) Submittal of an application for a grant of access or application for an indenture of access suspends the 30 or 60-day timeline identified in subsection (4)(a) or (4)(b) of this rule.

(b) Submittal of a written request for the post-decision collaborative discussion under OAR 734-051-3090 or dispute review board review under OAR 734-051-3100 suspends the 120-day timeline in section (4) of this rule.

(c) The timelines in division 51 may be extended where the applicant and the department agree to an extension in writing before the applicable deadline, as specified in these rules. Any agreement to extend a timeline shall include a new deadline date and shall state the reason for the extension. Applications for which an extension of time has been issued will expire on the deadline date specified in the extension letter if no new extension has been agreed to and the activities for which the deadline was extended have not been completed.

(8) Pending Land Use Approvals. If a land use action is pending, including an appeal of a final land use decision or a limited land use decision, for a property for which an application has been submitted, the application may be processed and:

(a) Approval will be conditioned on the department receiving notice of approval of the land use action shown on the application; and

(b) The department may issue a construction permit while the local land use action is pending. A deposit may be required, to be determined in the manner used for a temporary approach in OAR 734-051-4040 to ensure that the approach will be removed if the land use is not approved; and

(c) The department shall not issue a Permit to Operate until the applicant provides the department with written proof of final land use decision.

(9) Notice of Decision and Findings. The department shall document with written findings the decision to approve, approve with mitigation or deny an approach, and shall provide written notice of its final decision to the applicant as follows:

(a) The notice shall describe the applicant's appeal rights, as set forth in OAR 734-051-3080 through 734-051-3110; and

(b) Written findings shall be provided to the applicant upon request.

(10) Form of the Record. The record shall include the following, as applicable:

(a) Completed application pursuant to OAR 734-051-3030(3);

(b) Documents or other information received or considered;

(c) Written stipulations;

(d) Meeting notes; and

(e) Findings and final decision.

(11) Appeals. An appeal of a department decision to approve with mitigation or deny an application for an approach permit can be made pursuant to OAR 734-051-3080 through 734-051-3110.

(12) Expired Applications. Except as provided by OAR 734-051-3040(7), an application for an approach shall expire after one hundred twenty (120) days of inactivity on the part of the applicant if the department sends a reminder letter to notify the applicant that ninety (90) days have passed with no activity, and advising that the application will expire in thirty (30) days if the application continues to be inactive. After an application for state highway approach has expired, a new application is required.

Stat. Auth.: ORS 184.616, 184.619, 374.310-374.314, 374.345 & 374.355

Stats. Implemented: ORS 374.300-374.360, §27, ch. 330, OL 2011

# ADMINISTRATIVE RULES

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12; HWD 2-2014, f. 6-25-14, cert. ef. 6-30-14

## 734-051-3050

### Deviations from Approach Spacing, Sight Distance, and Channelization Standards for a Private Approach

(1) Purpose. The purpose of this rule is to establish criteria for the region access management engineer to approve; approve with mitigation; or deny requests for deviations from the standards set forth in OAR 734-051-4020.

(2) Requests for a Deviation. The applicant may request one or more deviations for an approach that does not meet spacing, sight distance, or channelization standards set forth in OAR 734-051-4020(2). Applications that request deviations:

(a) Must identify all deviations needed and any dependency or relationship that they have with one another; and

(b) Must include a traffic impact analysis prepared by a professional engineer as set forth in OAR 734-051-3030(4) and 734-051-3030(5), unless waived by the department.

(3) Mitigation. The department may require mitigation measures as set forth in OAR 734-051-3070 as a condition of approval of a deviation under this rule.

(4) Request for a Deviation Not Required. A request for a deviation from approach spacing, sight distance and channelization standards is not required if:

(a) The application is for property with no means of vehicular access other than the proposed approach, and the department and the applicant agree on a location for the approach and mitigation, if any, of the approach that optimizes safety, highway operations, and site design; or

(b) The permit action is triggered by a change of use and the department and the applicant agree that the proposed approach moves in the direction of conformance with the standards as set forth in OAR 734-051-3020.

(5) Approval of Requests for Deviations from Approach Spacing Standards. The region access management engineer may approve a request for a deviation from access spacing standards set forth in OAR 734-051-4020(8) and 734-051-4020(9) upon determining that the approach adequately addresses the safety and highway operations concerns set forth in section 734-051-4020(3) and one or more of the conditions in (a) through (h) apply:

(a) The applicant agrees to provide a joint approach that serves two or more properties and results in a net reduction of connections to the highway;

(b) The applicant agrees to remove or combine connection(s) to the highway resulting in a net reduction of connections;

(c) Adherence to approach spacing standards will cause the approach to conflict with a significant natural or historic feature including but not limited to trees and unique vegetation, a bridge, waterway, park, archaeological area, or cemetery;

(d) The highway segment functions as a local interest road as defined in the Oregon Highway Plan;

(e) On a couplet with directional traffic separated by a city block or more, the request is for an approach at mid-block with no other existing approaches in the block or the proposal consolidates existing vehicle accesses at mid-block;

(f) Based on the region access management engineer's determination that one or more of the safety and operations factors in OAR 734-051-4020(3) is significantly improved as a result of the approach;

(g) The region access management engineer and the applicant agree on an approach location and mitigation measures that optimize safety, highway operations and site design; and/or

(h) The applicant demonstrates that existing development patterns or land holdings make joint use approaches impractical.

(6) Approval of Requests for Deviations from Approach Spacing Standards in Interchange Areas.

(a) The region access management engineer shall use traffic volumes based on a 20-year planning horizon in evaluating applications for deviations from the approach spacing standards for approaches proposed within an interchange management area. The 20-year year planning horizon will be measured from the date of application.

(b) The region access management engineer may approve a request for a deviation from spacing standards in an interchange area upon determining that the approach adequately addresses the safety and highway operations factors set forth in section OAR 734-051-4020(3) and one or more of the conditions in (A) through (D) apply:

(A) A condition of approval, included in the Permit to Operate, is removal of the approach when alternate access becomes available;

(B) The approach is consistent with a facility plan in the area of an interchange that has been adopted by the commission as set forth in OAR 734-051-7010;

(C) The applicant provides a joint approach that serves two or more properties and results in a net reduction of approaches to the highway; or

(D) Connections are combined or eliminated resulting in a net reduction of connections to the state highway.

(7) Approval of Requests for Deviations from Channelization Standards. The department may approve a deviation from channelization standards, pursuant to subsections (a) through (c) below:

(a) The region access management engineer may approve a deviation to the channelization standards set forth in OAR 734-051-4020(2) upon determining that the deviation adequately addresses highway safety and operations concerns set forth in section 734-051-4020(3) and the conditions in (A) or (B) apply:

(A) The region access management engineer determines that channelization is not necessary to approve the application;

(B) The applicant agrees to restrict turning movements that cause the need for channelization in a manner satisfactory to the region access management engineer.

(b) If existing development patterns, land holdings, highway configuration or other factors make it impractical to meet channelization standards, the region access management engineer may require turning movements to be restricted at the approach.

(c) The department may require submittal of channelization design drawings prepared and sealed by a professional engineer for approval of a deviation for channelization.

(8) Approval of Requests for Deviations from Sight Distance Standards. The department may approve a deviation from sight distance standards, pursuant to subsections (a) or (b) below:

(a) The region access management engineer may approve a request for a deviation from sight distance standards set forth in OAR 734-051-4020(2) based on consideration of relevant factors, including but not limited to:

(A) Highway design speed, posted speed, and eighty-fifth (85th) percentile speed;

(B) Probable line of sight for the proposed approach;

(C) Anticipated traffic volumes at the proposed approach;

(D) Guidelines for intersection sight distance and stopping sight distance in the 2011 AASHTO Policy on Geometric Design of Highways and Streets; and

(E) Potential mitigation that would improve sight distance.

(b) Where a speed study prepared by the applicant and accepted by the department determines that the eighty-fifth (85th) percentile speed is lower than the current posted speed, the department may approve a deviation from the sight distance standard based upon the lower speed determination.

(9) Denial of Requests for Deviations. The region access management engineer shall not approve a request for a deviation from approach spacing, channelization or sight distance standards when any of the conditions in (a) through (d) apply:

(a) The requirements for approval under sections (5) through (8) of this rule, as applicable, cannot be met; or

(b) The standards can be met even though adherence to the standards results in higher site development costs; or

(c) The deviation creates a significant safety or traffic operations problem that cannot be mitigated by the applicant; or

(d) The request for a deviation results from a self-created hardship including but not limited to:

(A) Conditions created by the proposed site plan, building footprint or location, on-site parking, or circulation; or

(B) Conditions created by lease agreements or other voluntary legal obligations.

(10) Region Manager Approval of Deviations. The region manager, not a designee, may approve a request for a deviation from approach spacing, channelization or sight distance standards when the region access management engineer is prohibited from doing so under section (9) and:

(a) A determination is made by a professional engineer as defined in OAR 734-051-1070 and assigned by the region manager to analyze the request for a deviation determines that the approach adequately addresses the safety and highway operations concerns, or those concerns can be adequately mitigated; and

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(b) The region manager, after consulting with the highway division administrator, identifies and documents conditions or circumstances unique to the site or the area that support the development.

Stat. Auth.: ORS 184.616, 184.619, 374.310-374.314, 374.345 & 374.355  
Stats. Implemented: ORS 374.300-374.360, §27, ch. 330, OL 2011  
Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12; HWD 2-2014, f. 6-25-14, cert. ef. 6-30-14

## 734-051-3060

### Pre-Decision Collaborative Discussion for Highway Approach Permit Applications

(1) Offer of Pre-Decision Collaborative Discussion. When the department intends to deny an application or approve an application with mitigation, it shall notify the applicant of its intent and offer to meet with the applicant in a pre-decision collaborative process, as described in sections (2) through (6), below.

(2) Notice. The department notice in section (1) shall describe the basis of the preliminary decision, extend an offer to meet with the applicant to provide further explanation or clarification of the department's preliminary decision, and provide the applicant an opportunity to propose modifications.

(3) Goals of Pre-Decision Collaborative Discussion. The goals of the pre-decision collaborative process are to ensure that all relevant information has been fully considered, provide opportunity to resolve differences to the extent possible, and facilitate timely issuance of a final decision.

(4) Timeline. The department's notice of preliminary decision and offer of a collaborative process must occur within either the 30-day or 60-day application decision timeline under OAR 734-051-3040(4), whichever is applicable. The department and applicant may agree to extend the timelines for the department's final decision as part of the collaborative process.

(5) Written Decision. Agreements reached using a pre-decision collaborative discussion shall be incorporated into the department's permit decision.

(6) Applicant May Decline Offer. If the applicant declines the offer of a collaborative process, or a collaborative agreement cannot be reached, the department shall issue its final decision in writing, including findings as set forth in OAR 734-051-3040(9).

Stat. Auth.: ORS 184.616, 184.619, 374.310-374.314, 374.345 & 374.355  
Stats. Implemented: ORS 374.300-374.360, §27, ch. 330, OL 2011  
Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12; HWD 2-2014, f. 6-25-14, cert. ef. 6-30-14

## 734-051-3070

### Mitigation Measures

(1) Mitigation Authorized. The department may require mitigation measures to address adverse impacts associated with a proposed approach on the state highway or the subject property that is not prohibited by statute or division 51 rules.

(2) Cost of Mitigation. Unless otherwise set forth in division 51 rules, the cost of mitigation measures is the responsibility of the applicant, permittee, or property owner as set forth in OAR 734-051-5050.

(3) Non-Traversable Medians. The department may not impose non-traversable medians as a mitigation measure for approach permit applications unless the department first establishes that no other mitigation measures are effective or available under the circumstances.

(4) Mitigation Measures. Mitigation measures may include one or more of the following in (a) through (n) below:

- (a) Modifications to an existing connection;
- (b) Modifications of on-site parking or storage of queued vehicles;
- (c) Installation of left turn or right turn channelization or deceleration lanes;
- (d) Modifications to left turn or right turn channelization or deceleration lanes;
- (e) Modifications to the roadway to maintain or improve intersection sight distance;
- (f) Modification or installation of traffic signals or other traffic control devices, subject to subsection OAR 734-051-3070(7);
- (g) Modification of the highway;
- (h) Modification or installation of curbing;
- (i) Consolidation of existing approaches or provisions for joint use approaches;
- (j) Restriction of turn movements for circumstances such as:

- (A) The proximity of existing connections or offset of opposing connections;
- (B) Approaches within an influence area of an interchange;
- (C) Approaches along an expressway;
- (D) The proximity of railroad grade crossings;

- (E) Approaches with a crash history involving turning movements;
- (F) Approaches within the functional area of an intersection.
- (k) Installations of sidewalks, bicycle lanes, or transit turnouts;
- (l) Development of, or improvements to, reasonable alternate access, subject to OAR 734-051-4020(6) and 734-051-4020(7);

(m) Modifications of local streets or roads along the frontage of the site; and

(n) Installation of non-traversable medians where no other mitigation measure is effective or available under the circumstances.

(5) Relationship of Mitigation to Impacts. Mitigation measures are directly related to the impacts of the particular approach on the highway and the scale of the mitigation measures will be directly proportional to those impacts, as follows:

(a) Mitigation measures located entirely within the property controlled by the applicant and/or within existing state right of way shall be preferred over all other means of mitigation;

(b) Where mitigation requires the use of property other than that which is controlled by the applicant and/or ODOT, the department will make an effort to participate in negotiations between the applicant and other affected property owners, or assist the applicant to take necessary actions. However, ODOT will not exercise its power of eminent domain to acquire property necessary for improvements to mitigate the adverse impacts associated with a private approach that is not also part of project delivery; and

(c) When cumulative effects of existing and planned development create a situation where approval of an application would require improvements that are not directly proportional to the impacts of the proposed approach, the region manager may negotiate mitigation measures to mitigate impacts as of the day of opening and defer the remaining mitigation to a future ODOT project which may require that the applicant convey any necessary right of way to ODOT prior to development of the subject approach.

(6) Access Mitigation and Access Management Proposals. An applicant may propose mitigation for an approach to be implemented by the applicant or the local jurisdiction. The department will work with the local jurisdiction and the applicant to establish mitigation measures and alternative solutions including:

- (a) Changes to on-site circulation;
- (b) On-site improvements; and
- (c) Modifications to the local street network.

(7) Traffic Controls as Mitigation. Where mitigation measures include traffic controls:

(a) The applicant bears the cost of the controls and construction of required traffic controls within a timeframe identified by the department or must reimburse the department for the cost of designing, constructing, or installing traffic controls; and

(b) An applicant that is a lessee must provide evidence of compliance with required traffic controls and must identify the party responsible for construction or installation of traffic controls during and after the effective period of the lease.

(8) Traffic Signal Prioritization. Traffic signals are approved in the order of priority, (a) through (c) below:

- (a) Traffic signals for public approaches.
- (b) Private approaches identified in a transportation system plan to become public.
- (c) Private approaches.

(9) Traffic Signal Requirements. Traffic signals are approved with the following requirements:

(a) A signalized private approach must meet spacing standards for signalization relative to all planned future signalized public road intersections; and

(b) Location of traffic signals on state highways must meet the criteria of OAR 734-020-0400 through 734-020-0500.

(10) Ownership of Improvements. All highway improvements within the right of way resulting from mitigation constructed by the permittee, subject to inspection and acceptance by the department, become the property of the department. An agreement between the department and permittee may be required with mitigation. Such agreement may include, but shall not be limited to, identifying work that is allowed to occur within the right of way, specifying the responsibilities of each party, including any maintenance responsibility, and documenting the transfer of ownership from the applicant to the department for roadway improvements.

(11) Appealable Decision. Approval of an application with mitigation measures is an appealable decision.

Stat. Auth.: ORS 184.616, 184.619, 374.310-374.314, 374.345 & 374.355  
Stats. Implemented: ORS 374.300-374.360, §27, ch. 330, OL 2011

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Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12; HWD 2-2014, f. 6-25-14, cert. ef. 6-30-14

## 734-051-4020

### Standards and Criteria for Approval of Private Approaches

(1) Applicability. This rule describes standards and criteria that the department applies to the review of an Application for State Highway Approach that has been deemed complete as set forth in OAR 734-051-3030. Applications submitted for change of use of an approach may be reviewed under the standards and criteria set forth in 734-051-3020 in lieu of this rule.

(2) General Approval Criteria. Except for applications where the department identifies safety or operations concerns set forth in section (3), and except for applications that are subject to alternate access considerations as set forth in sections (5) through (7), the Region Manager shall approve an Application for State Highway Approach that meets the general approval criteria (a)-(c) in this section. Additional criteria set forth in section (9) apply to interchange areas.

(a) Approach Spacing Standards. Section (8) of this rule sets forth the approach spacing standards, except that the spacing standards applicable to interchanges and interchange areas are set forth in section (9).

(b) Channelization Standards. An application meets the channelization standards of this rule if none of the conditions in (A) through (C), below, exist; where a condition in (A) through (C) exists, an application may meet the channelization standards if the existing or proposed lane configuration on the highway conforms to the design requirements of the ODOT Highway Design Manual in effect at the time the application is filed.

(A) Average daily trips for the existing or proposed development exceed four hundred (400) for an application on a two-lane highway with annual average daily traffic of five thousand (5,000) or more motor vehicles; or

(B) Average daily trips for the existing or proposed development exceed four hundred (400) for an application on a four-lane highway with annual average daily traffic of ten thousand (10,000) or more motor vehicles; or

(C) Average daily trips for the existing or proposed development multiplied by the annual average daily traffic on the highway is equal to or greater than the products listed in the Table 1.

(c) Sight Distance Standards. Table 2 sets forth the sight distance standards for approaches. An Application for State Highway Approach meets the sight distance standard of this rule if the intersection sight distance at the intersection of the proposed approach and highway is equal to or greater than shown in Table 2. Intersection sight distance shall never be less than stopping sight distance, as calculated in accordance with 2011 AASHTO Policy on Geometric Design of Highways and Streets. Sight distance must be unobstructed within the sight triangle based on the following positions of measurement:

(A) Driver's eye height equal to 3.5 feet above the road surface of the proposed approach at a location 15 feet from the edge of the travel lane; and

(B) Object height equal to 3.5 feet above the road surface at the near edge of the travel lane to the left and at the far edge of the travel lane to the right of the approach. [Table not included. See ED. NOTE.]

(3) Safety and Operations Concerns. The department has the burden of proving safety and highway operations concerns that it relies upon in requiring mitigation or in denying an application based on those concerns. The department may deny an application where the applicant is unable to provide adequate improvements to mitigate documented safety or highway operations concerns; safety and highway operations concerns that the department may consider are limited to (a) through (f), below:

(a) Regular queuing on the highway that impedes turning movements associated with the proposed approach. Regular queuing will be evaluated based on the ninety-fifth (95th) percentile queue on the highway during the highway peak hour, as determined by field observation or traffic analysis in accordance with ODOT's Analysis Procedures Manual; or

(b) Overlapping left turn movements or competing use of a center turn lane from a connection located on the opposite side of the highway; or

(c) Location of the proposed approach within a highway segment with a crash rate that is twenty (20) percent or higher than the statewide average for similar highways; or

(d) Location of the proposed approach within a highway segment listed in the top five percent of locations identified by the Safety Priority Index System developed by the department; or

(e) The proposed approach is on a district or regional highway with a posted speed of 50 miles per hour or higher and the distance to the nearest public approach is less than the stopping sight distance on the highway, cal-

culated in accordance with the 2011 AASHTO Policy on Geometric Design of Highways and Streets; or

(f) Insufficient distance for weave movements made by vehicles exiting the proposed approach across multiple lanes in the vicinity of:

(A) Signalized intersections; or

(B) Roads classified as collectors or arterials in an acknowledged transportation system plan or comprehensive plan, or classified as such by the Federal Highway Administration; or

(C) On-ramps or off-ramps.

(4) Applications that Do Not Meet Approval Standards and Criteria — Deviations. The department may approve an application that does not meet the approval standards and criteria of this rule for approach spacing, sight distance, and/or channelization if a deviation from the standards is approved as set forth in OAR 734-051-3050.

(5) Applications for Properties with No Alternate Access. For an application for an approach to property with a right of access and no alternate access, the department may waive the standards and criteria of this rule for access spacing, sight distance and channelization if the department and the applicant agree on an approach location and mitigation measures that optimize safety, highway operations and site design. Approval of an application under this section does not require approval of a deviation. If agreement cannot be reached the department shall apply OAR 734-051-4020(2)–(4) to the application to approve, deny, or approve with mitigation the application, consistent with the procedures in 734-051-3040. In applying 734-051-4020(2)–(4), the department may include any matters of agreement or other results from discussion with the applicant pursuant to this section. The department's decision to deny or approve with mitigation applications under 734-051-4020(2)–(4) is subject to post-decision review under 734-051-3080.

(6) Applications Where the Department Shall Consider Alternate Access.

The region manager shall consider alternate access to a property only for an application for an approach to a highway designated as an expressway as described in subsection (a) of this section, or for a second or subsequent approach to a property in a rural area as described in subsection (b) of this section.

(a) Expressways. The region manager may approve an application to an expressway for a property that has alternate access when the criteria in (A) through (C) below are met:

(A) The department determines that either:

(i) The alternate access to the property cannot be made reasonable based on findings under section (7) of this rule; or

(ii) The approach provides an immediate and long-term benefit to the state highway system as set forth in OAR 734-051-4030, in addition to mitigating any safety or operations concerns; and

(B) The application meets the applicable standards and criteria of this rule or a deviation is approved as set forth in OAR 734-051-3050; and

(C) The approach does not cause any of the safety or operations concerns set forth in section (3) of this rule, or those concerns can be adequately mitigated.

(b) A Second or Subsequent Approach in a Rural Area. The region manager may approve an application for a second or subsequent approach to a property in a rural area that has alternate access when the criteria in paragraphs (A) through (C) are met:

(A) The department determines that either:

(i) The alternate access to the property cannot be made reasonable based on findings under section (7) of this rule; or

(ii) The approach will serve rural infill or redevelopment and approval of the approach will result in a net reduction of connections to the highway or the net result improves safety for any remaining approaches; and

(B) The application meets the applicable standards and criteria of this rule or a deviation is approved as set forth in OAR 734-051-3050; and

(C) The approach does not cause any of the safety or operations concerns set forth in section (3) of this rule, or those concerns can be adequately mitigated.

(7) Reasonable Alternate Access Criteria. In determining whether alternate access is or can be made reasonable pursuant to section (6) of this rule, the department shall consider all of the following provisions in subsections (a) through (e) below:

(a) Authorized Uses. Alternate access to the property is adequate to allow the authorized uses for the property identified in the acknowledged local jurisdiction comprehensive plan and local land use regulations, taking into account the economic development needs of the property;

(b) Type, Number, Size and Location of Alternate Access. The type, number, size and location of alternate access are adequate to serve the vol-

# ADMINISTRATIVE RULES

ume and type of traffic reasonably anticipated to enter and exit the property, based on the planned uses for the property and taking into account the economic development needs of the property;

(c) Constraints to Alternate Access. The presence of constraints that limit the development of alternate access including:

- (A) Legal restrictions;
- (B) Geographic restrictions;
- (C) Historical or cultural resources; and

(D) Physical considerations such as planned streets, roadway width, and weight and size restrictions;

(d) Availability of Mitigation Measures. The availability of mitigation measures set forth in OAR 734-051-3070 that the applicant could make on the property or along the roadway frontage of the property, including situations in which the applicant or the local jurisdiction commits proportional shares toward the cost of removal or mitigation of geographic, safety, or physical restrictions on the property or local street network. Neither the lack of commitment by a local government to share the cost of mitigation nor the cost of mitigation alone is conclusive in evaluating whether a vehicle access is or could be made reasonable; and

(e) Phasing. In circumstances where a significant difference exists between the existing and the planned local road network the department may consider a phased method to establishing reasonable alternative access as follows:

(A) Where a planned public street or road network cannot be provided at the time of development, an application for an approach may be approved with conditions requiring a connection to the planned local street or road network when it becomes available;

(B) The approach permit to the state highway may be revoked and the approach removed, or the approach permit may be modified and additional mitigation required when the planned street or road network becomes available; and

(C) ODOT and the local government enter into an agreement regarding the timing, cost and responsibility for the development of the planned street or road network.

(8) Access Management Spacing Standards. Tables 3 through 10 set forth the access management spacing standards. Tables 7, 8, 9, and 10, including Figures 1, 2, 3 and 4, are the spacing standards for interchanges and approaches in interchange areas. Tables 3 and 6 are the standards for unclassified highways such as service roads and frontage roads. An application meets the spacing standards set forth in Tables 3 through 10 if the spacing of a proposed approach is equal to or greater than the distance shown in the applicable table. The spacing standards in Tables 3 through 6 are subject to the method of measurement and exceptions in subsections (a) through (c) below:

(a) The spacing standards in Tables 3 through 6 apply to the distance measured along the highway from the center of an existing or proposed private approach to the center of the nearest existing private connection, proposed approach, or public approach on the same side of the highway in both directions;

(b) The following exceptions in paragraphs (A) through (E) apply to the spacing standards in Tables 3 through 6:

(A) On one-way highways or highways with a non-traversable median, where turning movements to and from the highway are limited to either right in/right out or left in/left out turns only, the applicable approach spacing standards equal one-half the spacing standards in Tables 4 through 6.

(B) Tables 4 through 6 apply to highways designated as expressways regardless of average daily traffic.

(C) The spacing standards included in special transportation area management plans, and facility plans that are adopted by the Commission, take precedence over the spacing standards described in Tables 3 through 6.

(D) For special transportation areas where no management plan has been adopted, the minimum access management spacing for public road approaches is the existing city block spacing or the city block spacing as identified in the local comprehensive plan. Public road connections are preferred over private approaches and in special transportation areas, private approaches are discouraged; however where private approaches are allowed and where land use patterns permit, the minimum access management spacing for private approaches is 175 feet or mid-block if the current city block spacing is less than 350 feet.

(E) For a signalized private approach, the signal spacing standards in OAR 734-020-0400 through 734-020-0500 supersede the access management spacing standards in Tables 3 through 6; and

(c) The spacing standards in Tables 3 through 6 do not apply to approaches in existence prior to January 1, 2012, except when:

(A) A new approach or change of use of an approach is required under ORS 374.312;

(B) Where infill development or infill redevelopment occurs and spacing or safety will be improved by moving in the direction of the spacing standards in Tables 3 through 6; or

(C) Where a highway or interchange project occurs and spacing or safety will be improved by moving in the direction of the applicable spacing standards in Tables 3 through 6.

(9) Spacing Criteria for Applications in an Interchange Area. In addition to the spacing standards in Tables 7 through 10, the following criteria in subsections (a) and (b) below apply to approval of an application for a proposed approach located in an interchange area:

(a) The approach must be consistent with adopted facility plans; and  
(b) Location of proposed traffic signals within an interchange area as illustrated in Figures 1, 2, 3 and 4 must meet the criteria of OAR 734-020-0400 through 734-020-0500.

Stat. Auth.: ORS 184.616, 184.619, 374.310-374.314, 374.345 & 374.355

Stats. Implemented: ORS 374.300-374.360, §27, ch. 330, OL 2011

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12; HWD 2-2014, f. 6-25-14, cert. ef. 6-30-14

## 734-051-5060

### Liability, Insurance and Bonding Requirements

(1) Liability. A permittee assumes responsibility for damage or injury to any person or property resulting from the construction, maintenance, repair, operation, or use of an approach for which a construction permit or a Permit to Operate is issued and where the permittee may be legally liable.

(2) Indemnification. An applicant or permittee indemnifies and holds harmless the State of Oregon, the commission, the department, and all officers, employees or agents of the department against damages, claims, demands, actions, causes of action, costs, and expenses of whatsoever nature which may be sustained by reasons of the acts, conduct, or operation of the applicant, his agents, or employees in connection with the construction, maintenance, repair, operation, or use of an approach. Any such indemnification shall also provide that neither the contractor or subcontractor, nor any attorney engaged by the contractor or subcontractor, shall defend any claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State of Oregon may, at any time at its election, assume its own defense and settlement in the event that it determines that the contractor is prohibited from defending the State of Oregon, or that the contractor is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue or that it is in the best interests of the State of Oregon to do so. The State of Oregon reserves all rights to pursue claims it may have against the contractor if the State of Oregon elects to assume its own defense.

(3) Amount of Insurance. Construction of an approach may not begin until the applicant provides the department with evidence of insurance in the following minimum amounts or the amounts required by the Department of Administrative Services, if greater:

(a) \$500,000 for property damage resulting from any single occurrence, or \$500,000 combined single limit and annual aggregate; and

(b) \$500,000 for the death or injury of any person, subject to a limit of \$500,000 for any single occurrence and annual aggregate.

(4) Additional Insured. Insurance policies must include as Additional Insured the State of Oregon, the commission, and the department, its officers, agents and employees, except as to claims against the permittee, for personal injury to any members of the commission or the department and its officers, agents, and employees or damage to any of its or their property.

(5) Insurance Required Prior to Construction. Construction of an approach may not begin until a copy of the insurance policy or a certificate showing evidence of insurance is filed with the department.

(6) Notice of Intent to Cancel or Not Renew Insurance. A permittee shall provide thirty (30) days written notice to the department of intent to cancel or intent not to renew insurance coverage. Failure to comply with notice provisions does not affect coverage provided to the State of Oregon, the commission, or the department, its officers, agents and employees.

(7) Damages. If the permittee or permittee's contractor damages the highway surface or highway facilities, the applicant must replace or restore the highway or highway facilities to a condition satisfactory to the department.

(8) Assurances. The permittee must furnish, in an amount specified by the region manager and for the time period necessary to install the approach, a cash deposit or a bond issued by a surety company licensed to

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do business in the State of Oregon to ensure the approach is installed in conformance with the requirements of this division and that any damage to the highway has been corrected to the department's satisfaction; and no construction is performed until a deposit or bond is filed with the department.

Stat. Auth.: ORS 184.616, 184.619, 374.310-374.314, 374.345 & 374.355  
Stats. Implemented: ORS 374.300-374.360, §27, ch. 330, OL 2011  
Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12; HWD 2-2014, f. 6-25-14, cert. ef. 6-30-14

## 734-051-5120

### Access Management in Project Delivery

#### (1) Applicability:

(a) This rule applies to access management in the project delivery process for modernization and highway improvement projects included in the Statewide Transportation Improvement Program.

(b) For purposes of this rule, a highway improvement project is a project in the Statewide Transportation Improvement Program that proposes to modify, relocate, or remove existing public or private connections to the state highway within project limits.

(2) Department Exemptions. This rule does not create an obligation that the department apply documentation requirements in OAR 734-051-3010 through 734-051-3050 (documentation requirements that pertain to approach permit applications).

#### (3) Access Management Strategy

(a) The department shall develop an access management strategy during project delivery for modernization and highway improvement projects included in the Statewide Transportation Improvement Program. The access management strategy shall be developed in collaboration with cities, counties and owners of real property abutting a state highway and shall be consistent with the Oregon Transportation Plan, the Oregon Highway Plan, and other transportation modal plans adopted by Oregon Transportation Commission.

(b) An Access management strategy shall include an access management methodology that balances the economic development objectives of properties abutting the state highway with the transportation safety, access management objectives, and mobility of state highways, in a manner consistent with local transportation system plans and the land uses permitted in the local comprehensive plans acknowledged under ORS chapter 197.

(c) An Access management strategy shall identify the location and type of public and private approaches and other necessary improvements that are planned to occur primarily in the highway right of way and that are intended to improve current conditions on the highway by moving in the direction of the objective standards described in ORS 374.311.

#### (4) Content of an Access Management Strategy

(a) The development of the access management methodology under section (3)(b) may include the following factors:

(A) The level of direct highway access generally needed for properties based upon the types of uses allowed by the zoning and comprehensive plan designations, such as residential, commercial retail, or other designation, recognizing that direct access may increase the economic development opportunities for some uses located on abutting properties;

(B) Effects of out of direction travel on the ability of customers to access various types of uses, recognizing differences between destination and pass-by uses;

(C) Effects of changing existing connections and circulation patterns for existing developed properties;

(D) Effects of traffic congestion or speed which could negatively affect the ability of customers to access adjacent properties safely;

(E) Community support for the highway projects and economic development proposals in the planning area, as indicated by action of the governing body of the local government;

(F) The highway classification and long term vision for the function of the highway as to the level of importance for providing mobility and movement of freight;

(G) Existing and long term safety needs of all highway users;

(H) Reducing vehicle conflict points where possible, particularly around critical intersections and interchange locations, to improve highway safety and operations consistent with the highway classification;

(I) Safety and operations concerns under OAR 734-051-4020(3);

(J) Safety planning tools, data and resources such as the department's Safety Priority Index System, Analysis Procedures Manual, Roadway Departure Plan, Bicycle/Pedestrian Safety Plan, and Highway Safety Manual predictive models that identify areas of existing and future safety concerns. When considering safety factors as part of the methodology, the

safety concerns and issues must be documented by a professional engineer as defined in OAR 734-051-1070.

(b) The access management strategy shall include the locations of existing or planned intersecting county roads and city streets. The locations shall be consistent with the city and county transportation system plans or must be determined and agreed upon through collaboration among the department and the cities and counties affected by the project.

(c) The access management strategy shall identify locations where the department intends to acquire all rights of access to a segment of the state highway as part of the project.

(d) The access management strategy shall identify the locations and types of private approaches that are planned for the highway right of way. When determining the locations of private approaches, the department shall collaborate with affected real property owners, property lessees and businesses in the following manner:

(A) The department shall provide written notice to all affected real property owners and, when possible, property lessees and business operators. The department's notice will inform the parties that, based on application of the access management methodology, it may be necessary to relocate, modify, or remove one or more approaches to their property. The department notice shall invite the affected real property owners, lessees and business operators to meet with the department to review the application of the methodology to the approaches to their property.

(B) If an affected real property owner, property lessee or business operator accepts the invitation to meet with the department, then the department shall meet with the party(ies) to explore options for addressing the application of the methodology to their property.

(C) After meeting with the affected real property owner, property lessees or business operators the department shall provide written notice of the final decision regarding the location, modification or closure of the approaches to their property. The department's notice will explain the property owner's options for appeal of the department's decision, under OAR 734-051-3080 through OAR 734-051-3110. Only an affected real property owner may appeal the department's final decision to modify, mitigate, or close an approach to their property.

(5) Public Involvement Process. The department shall provide a public involvement process for cities, counties, highway users, real property owners, property lessees, and business operators affected by a modernization or highway improvement project to assist with:

(a) Identifying deficiencies of highway segments impacted by the project;

(b) Establishing the long-term vision for the highway segments that are part of the project to guide the scope and design of improvements for the project;

(c) Establishing the access management methodology by which private connections will be considered for modification, relocation or closure; and

(d) Establishing locations where the department proposes to acquire all rights of access to a segment of the state highway as part of the project.

#### (6) Request for Review of the Access Management Methodology

(a) The department shall provide written notice to all affected real property owners at least twenty-one (21) calendar days prior to taking action to finalize the access management methodology for a highway project.

(b) Affected real property owners may make a written request for a review of the access management methodology prior to the department finalizing it, through either of the following:

(A) A collaborative discussion under section (7) of this rule; or

(B) An Access Management Dispute Review Board under section (8) of this rule.

(c) Affected real property owners may request a review of the Access Management Methodology not later than twenty-one (21) calendar days following the date of the department notice under (a) of this section. Only an affected real property owner may request a review of the Methodology. The request for review must be made in writing and state whether the request is for a review through a collaborative discussion under section (7) or an Access Management Dispute Review Board under section (8).

(d) An affected real property owner who requests a review of an access management methodology by collaborative discussion may also request a review by an Access Management Dispute Review Board after completion of the collaborative discussion. The request for review by an Access Management Dispute Review Board must be made not later than twenty-one (21) calendar days after the date of the final decision issued by the region manager following the completion of the collaborative discussion under section (7) of this rule.

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## (7) Collaborative Discussion Process

(a) If an affected real property owner requests a collaborative discussion to review the access management methodology, the collaborative discussion shall be conducted within forty five (45) calendar days from the date of written request from the affected real property owner(s), unless the department and affected real property owner(s) agree to a time extension in writing.

(b) The region manager may include any department staff that he or she finds appropriate or necessary in the collaborative discussion process. In addition, the region manager shall invite local government representatives, and may include other facility users, economic development representatives or other parties which the region manager believes will contribute to finding appropriate solutions. The collaborative discussion shall be conducted under the alternative dispute resolution model in ORS 183.502, unless a different process is agreed upon by the department and the affected real property owner(s).

(c) The region manager shall consider the information presented as part of the collaborative discussion and make the final decision. Within twenty-one (21) calendar days following the completion of the collaborative discussion, the region manager shall notify the property owner(s) in writing of the final decision to:

(A) Modify the access management methodology; or

(B) Finalize the access management methodology without modifications.

## (8) Access Management Dispute Review Board Process

(a) The actions and recommendations of the Access Management Dispute Review Board are not land use decisions, as defined in ORS 197.015, and may not be appealed to the Land Use Board of Appeals.

(b) Where more than one affected real property owner with the same or similar concerns requests review of the access management methodology by an Access Management Dispute Review Board, the department may consolidate the reviews.

(c) The Access Management Dispute Review Board shall include the following:

(A) The director, or a designee of the director, who is familiar with the location of the project;

(B) A representative of the local jurisdiction for which the state highway is located;

(C) An independent professional engineer with education or experience in traffic engineering as defined in OAR 820-040-0030; and

(D) A representative from the economic or business sector.

(d) The Access Management Dispute Review Board shall be conducted not later than forty-five (45) calendar days from the date of written request from the affected real property owner(s), unless the department and affected real property owner(s) agree to a time extension in writing. The Access Management Dispute Review Board shall make its recommendation to the director not later than fourteen (14) calendar days following the conclusion of its deliberations.

## (9) Director Decisions Based on the Recommendations of the Access Management Dispute Review Board

(a) The director shall consider the recommendations of the Access Management Dispute Review Board and make the final decision. The director shall notify in writing all parties participating in the review of the final decision to either:

(A) Modify the access management methodology; or

(B) Finalize the access management methodology without modifications.

(b) The director's decision under Section (1) of this rule shall be issued not later than twenty-one (21) calendar days after receiving the recommendation of the Access Management Dispute Review Board.

Stat. Auth.: ORS 374.310 - 374.314, 374.345, 374.355, 374.360

Stats. Implemented: ORS 374.300 - 374.360, §27, Ch. 330, OL 2011, Ch. 476, OL 2013

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12; HWD 2-2014, f. 6-25-14, cert. ef. 6-30-14

## 734-051-7010

### Access Management in Highway Facility Plans

#### (1) General Provisions.

(a) Highway facility plans must be consistent with the Oregon Transportation Plan, the Oregon Highway Plan, and other transportation modal plans adopted by Oregon Transportation Commission. Where a proposed highway facility plan is inconsistent with adopted plans, the proposed highway facility plan must be amended to be made consistent or the adopted plans must be amended to be consistent with the proposed highway facility plan.

(b) Highway facility plans must include the location of county roads and city streets within the area described in the facility plan. The location of future city or county road connections or changes to existing city or county connections must be determined through collaborative discussion and agreement between the department and the affected cities and counties.

#### (2) Public Participation in the Development of Highway Facility Plans.

(a) The department shall provide for a public involvement process when it develops highway facility plans. The department shall provide notice to affected real property owners and, where possible, include property lessees and business operators that abut the state highway(s), local governments, stakeholders representing the freight industry and economic development, and others who have expressed interest in participating in the planning process in writing or by email. The department's notification shall describe the general planning process, identify opportunities for stakeholder participation, and include the name and contact information of the department project leader and links to obtain updates.

(b) The public participation process shall include an opportunity for affected real property owners that abut the highway to review the key principles and related methodology developed under sections (3) and (4) of this rule.

#### (3) Development of Key Principles for Access to Properties Abutting the Highway.

(a) Highway facility plans that identify a need to modify, relocate, or close one or more existing private approaches must include key principles in the plan to address how properties abutting a state highway will be evaluated to retain or obtain access to the state highway during and after plan implementation. These key principles will support the overall facility plan goals and objectives but will be more specifically focused on the economic development importance of highway access to abutting properties, while also recognizing the need to ensure transportation infrastructure improvement benefits are maintained throughout the life of the facility plan.

(b) The key principles must balance the economic development objectives of real properties abutting the state highway with the transportation safety, access management objectives, and mobility of the state highway in a manner consistent with state transportation plans, local transportation system plans, and the land uses permitted in the local comprehensive plans acknowledged under ORS Chapter 197.

(c) The highway facility plan shall articulate the key principles in sufficient detail and include an anticipated timeline for plan implementation. The key principles and timelines will inform affected real property owners who abut the highway(s) of the potential for modification, relocation or closure of existing private connections within the area described in the facility plan.

(d) Development of a Methodology for Facility Plans. The methodology developed by the department under this section for facility plans, including those prepared for specific highway improvement projects, will be an assessment that applies the key principles developed under section (3) to the planning process as it relates to access decisions. The facility plan and related methodology must be consistent with the agreed upon local road connections identified in the Transportation System Plan or with the local road connections agreed upon during development of the plan and must consider potential implications to both the state and local roadway networks and transportation systems. The methodology may include the following factors in development and application of the assessment:

(a) How properties abutting state highways within the facility plan area could develop or redevelop consistent with the existing zoning and comprehensive plan designations;

(b) The level of direct highway access generally needed for properties based upon types of uses allowed by the zoning and comprehensive plan designations, such as residential, commercial retail, or other designation; recognizing that direct access may increase the economic development opportunities for some uses located on abutting properties;

(c) Effects of out of direction travel on the ability of customers to access various types of uses, recognizing differences between destination and pass-by uses;

(d) Effects of changing existing connections and circulation patterns for existing developed properties;

(e) The safety and operational implications of traffic congestion or speed which could negatively affect the ability of customers to access adjacent properties safely;

(f) Creation of permanent jobs in the planning area in relation to the economy and population, including jobs in employment and industrial areas;

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(g) Community support for the highway projects and economic development proposals in the planning area, as indicated by action of the governing body of the local government;

(h) The agreed upon long term vision for the function of the highway as to its level of importance for providing mobility and movement of freight;

(i) Existing and long term safety needs of all highway users;

(j) Reducing vehicle conflict points where possible, particularly around critical intersections and interchange locations, to improve highway safety and operations consistent with the highway classification;

(k) Safety and operations concerns under OAR 734-051-4020(3);

(l) Safety planning tools, data and resources such as the department's Safety Priority Index System, Analysis Procedures Manual, Roadway Departure Plan, Bicycle/Pedestrian Safety Plan, and Highway Safety Manual predictive models that identify areas of existing and future safety concerns. When considering safety factors as part of the methodology, the safety concerns and issues must be documented by a professional engineer as defined in OAR 734-051-1070.

(5) Notice and Review of Key Principles for Affected Real Property Owners.

(a) The department shall provide written notice to all affected real property owners, and where possible include property lessee's and business operators, at least twenty (20) days prior to the approval by the department and local agency(s) of the key principles for a highway facility plan.

(b) Affected real property owners may make a written request for a review of the key principles and related methodology for the facility plan through either of the following:

(A) A Collaborative Discussion under Section (8) of this rule; or

(B) An Access Management Dispute Review Board under Section (9) of this rule.

(c) Affected real property owners may request a review any time following the date of the department notice in subsection (a), up to the time of plan adoption or finalization. The request for review must be made in writing and state whether the request is for review through a collaborative discussion or an Access Management Dispute Review Board.

(d) An affected real property owner who requests a review of the key principles and related methodology through collaborative discussion may also request a review by an Access Management Dispute Review Board after completion of the collaborative discussion. The request for review by an Access Management Dispute Review Board must be made not later than twenty-one (21) calendar days after the date of the final decision issued by the region manager under section (8) of this rule.

(6) Approval of Key Principles. The department shall approve the key principles by written signature and date of the director or region manager no sooner than 20 days after the date of the department notice in section (5)(a) of this rule with written concurrence by the local agency.

(7) Commission Adoption and Department Finalization of Highway Facility Plans.

(a) Highway facility plans that amend provisions of the Oregon Highway Plan shall be adopted by the Commission consistent with the provisions of OAR 731-015-0065. Prior to adoption by the Commission, the department shall work with local governments to amend local comprehensive plans, transportation system plans and local land use regulations to ensure consistency of the facility plan with local plans and regulations. A decision to adopt a highway facility plan is a land use decision that can be appealed to the Land Use Board of Appeals.

(b) Highway facility plans will be finalized by the department by a written signature and date of the director or region manager.

(8) Collaborative Discussion Process.

(a) If an affected real property owner requests review of the key principles or related methodology by a collaborative discussion, the collaborative discussion shall be within forty five (45) days from the date of written request from the affected real property owner, unless the department and affected real property owner agree to an extension of time.

(b) The region manager may include any department staff that he or she finds appropriate or necessary in the collaborative discussion process. In addition, the region manager shall invite appropriate local government representatives, and may include other facility users, economic development representatives or other parties which the region manager believes will contribute to finding appropriate solutions. The collaborative discussion shall be conducted under the alternative dispute resolution model in ORS 183.502, unless a different process is agreed upon by the department and the affected real property owner(s).

(c) The region manager shall consider the information presented as part of the collaborative discussion and make the final decision. Within

twenty-one (21) calendar days following the completion of the collaborative discussion, the region manager shall notify the participants in the collaborative discussion in writing of the final decision to:

(A) Modify the key principles or related methodology; or

(B) Validate the key principles or related methodology without modifications. If the key principles were not previously approved as specified under section (6)(a) of this rule, the department and local agency(ies) will approve the key principles, unless a request for review from the Access Management Dispute Review Board is received by the agency.

(9) Access Management Dispute Review Board Process.

(a) The actions and recommendations of the Access Management Dispute Review Board are not land use decisions, as defined in ORS 197.015, and may not be appealed to the Land Use Board of Appeals.

(b) An affected real property owner who requests a review by the Access Management Dispute Review Board may not request a review by collaborative discussion under section (8) of this rule.

(c) Where an affected real property owner requests review of the key principles or related methodology by the Access Management Dispute Review Board, the department will provide notice to all affected property owners inviting them to participate in the Access Management Dispute Review Board process. Only one Access Management Dispute Review Board process is allowed to be used for each facility plan.

(d) The Access Management Dispute Review Board shall include the following:

(A) The director or a designee of the director who is familiar with the location for which the facility plan is being prepared;

(B) A representative of the local jurisdiction in which the state highway is located;

(C) An independent professional engineer with education or experience in traffic engineering as defined in OAR 820-040-0030; and

(D) A representative from the economic or business sector.

(e) The Access Management Dispute Review Board shall be conducted within forty-five (45) days from the date of written request from the affected real property owner(s), unless the department and affected real property owner(s) agree to an extension of time in writing.

(f) The Access Management Dispute Review Board shall make its recommendation to the director not later than fourteen (14) calendar days following the conclusion of its deliberations.

(g) The director shall consider the recommendations of the Access Management Dispute Review Board and make the final decision. The director shall notify in writing all parties participating in the review of the final decision to either:

(A) Modify the key principles or related methodology; or

(B) Validate the key principles or related methodology without modifications. If the key principles were not previously approved as specified under section 6(a) of this rule, the department and local agency(ies) will approve the key principles.

(h) The director's decision under subsection (g) shall be issued not later than twenty-one (21) calendar days after receiving the recommendation of the Access Management Dispute Review Board under subsection (f).

Stat. Auth.: ORS 184.616, 184.619, 374.310-374.314, 374.345 & 374.355

Stats. Implemented: ORS 374.300-374.360, §27, ch. 330, OL 2011

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12; HWD 2-2014, f. 6-25-14, cert. ef. 6-30-14

## 734-051-8010

### Notice and Review of Key Principles and Related Methodology for Facility Plans for Affected Real Property Owners

(1) The Department shall provide written notice to all affected real property owners at least twenty (20) calendar days prior to the taking action to approve the key principles and related methodology for a highway facility plan.

(2) Affected real property owners may make a written request for a review of the key principles and related methodology for the Facility Plan through either of the following:

(a) A Collaborative Discussion under 734-051-8020; or

(b) An Access Management Dispute Review Board under 734-051-8025.

(3) Affected real property owners must request a review not later than twenty (20) calendar days following the date of the Department notice under Section (1) of this rule. The request for review must be made in writing and state whether the request is for review through a Collaborative Discussion or an Access Management Dispute Review Board.

(4) An affected real property owner who requests a review of the key principles and related methodology through Collaborative Discussion may

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also request a review by an Access Management Dispute Review Board after completion of the Collaborative Discussion. The request for review by an Access Management Dispute Review Board must be made not later than twenty-one (21) calendar days after the date of the final decision issued by the Region Manager following the Collaborative Discussion under 734-051-8020.

Stat. Auth.: ORS 374.310–374.314, 374.345, 374.355, 374.360  
Stats. Implemented: ORS 374.300 to 374.360, §27, ch. 330, OL 2011, ch. 476, OL 2013  
Hist.: HWD 7-2013(Temp), f. 12-23-13, cert. ef. 1-1-14 thru 6-30-14; Temporary suspended by HWD 2-2014, f. 6-25-14, cert. ef. 6-30-14

## 734-051-8015

### Notice and Review of the Access Management Methodology for a Highway Project

(1) The Department shall provide written notice to all affected real property owners at least twenty-one (21) calendar days prior to taking action to finalize the Access Management Methodology for a highway project.

(2) Affected real property owners may make a written request for a review of the Access Management Methodology prior to the department finalizing the Methodology, through either of the following:

- (a) A Collaborative Discussion under 734-051-8020; or
- (b) An Access Management Dispute Review Board under 734-051-8025.

(3) Affected real property owners must request a review of the Methodology not later than twenty-one (21) calendar days following the date of the Department notice under Section (1) of this rule. The request for review of the Methodology must be made in writing and state whether the request is for a review through Collaborative Discussion or an Access Management Dispute Review Board.

(4) An affected real property owner who requests a review of an Access Management Methodology through Collaborative Discussion may also request a review by an Access Management Dispute Review Board after completion of the Collaborative Discussion. The request for review by an Access Management Dispute Review Board must be made not later than twenty-one (21) calendar days after the date of the final decision issued by the Region Manager following the Collaborative Discussion under 734-051-8020.

Stat. Auth.: ORS 374.310–374.314, 374.345, 374.355, 374.360  
Stats. Implemented: ORS 374.300 to 374.360, §27, ch. 330, OL 2011, ch. 476, OL 2013  
Hist.: HWD 7-2013(Temp), f. 12-23-13, cert. ef. 1-1-14 thru 6-30-14; Temporary suspended by HWD 2-2014, f. 6-25-14, cert. ef. 6-30-14

## 734-051-8020

### Collaborative Discussion Process for Facility Plans and Access Management Strategies in Project Delivery

(1) If an affected real property owner requests a Collaborative Discussion, the Collaborative Discussion shall be conducted not more than forty five (45) calendar days from the date of written request from the affected real property owner(s), unless the Department and affected real property owner(s) agree to a time extension in writing.

(2) The Region Manager may include any Department staff that he or she finds appropriate or necessary in the Collaborative Discussion process. In addition, the Region Manager shall invite local government representatives, and may include other facility users, economic development representatives or other parties which the Region Manager believes will contribute to finding appropriate solutions. The Collaborative Discussion shall be conducted under the alternative dispute resolution model in ORS 183.502.

(3) The Region Manager shall consider the information presented as part of the Collaborative Discussion and make the final decision. Within twenty-one (21) calendar days following the completion of the Collaborative Discussion, the Region Manager shall notify the property owner(s) in writing of the final decision to:

- (a) Modify the key principles or related methodology; or
- (b) Finalize or adopt the key principles or related methodology without modifications.

Stat. Auth.: ORS 183.502, 184.616, 184.619, 374.310–374.314, 374.345, 374.355, 374.360  
Stats. Implemented: ORS 374.300 to 374.360, §27, ch. 330, OL 2011, ch. 476, OL 2013  
Hist.: HWD 7-2013(Temp), f. 12-23-13, cert. ef. 1-1-14 thru 6-30-14; Temporary suspended by HWD 2-2014, f. 6-25-14, cert. ef. 6-30-14

## 734-051-8025

### Access Management Dispute Review Board Process

(1) The actions and recommendations of the Access Management Dispute Review Board are not land use decisions, as defined in ORS 197.015, and may not be appealed to the Land Use Board of Appeals.

(2) Where more than one affected real property owner with the same or similar concerns requests review by an Access Management Dispute Review Board of the Key Principles and related Methodology for a facility plan or an Access Management Methodology for a highway project, the Department may consolidate the reviews.

(3) The Access Management Dispute Review Board shall include the following:

(a) The Director, or a designee of the Director, who is familiar with the location in which the facility plan is being prepared;

(b) A representative of the local jurisdiction for which the state highway is located;

(c) A traffic engineer who practices engineering in Oregon; and

(d) A representative from the economic or business sector.

(4) The Access Management Dispute Review Board shall be conducted not later than forty-five (45) calendar days from the date of written request from the affected real property owner(s), unless the Department and affected real property owner(s) agree to an time extension in writing. The Access Management Dispute Review Board shall make its recommendation to the Director not later than fourteen (14) calendar days following the conclusion of its deliberations.

Stat. Auth.: ORS 374.310–374.314, 374.345, 374.355, 374.360  
Stats. Implemented: ORS 374.300 to 374.360, §27, ch. 330, OL 2011, ch. 476, OL 2013  
Hist.: HWD 7-2013(Temp), f. 12-23-13, cert. ef. 1-1-14 thru 6-30-14; Temporary suspended by HWD 2-2014, f. 6-25-14, cert. ef. 6-30-14

## 734-051-8030

### Director Decisions Based on the Recommendations of the Access Management Dispute Review Board

(1) The Director or designee shall consider the recommendations of the Access Management Dispute Review Board and make the final decision. The Director or designee shall notify all parties participating in the review of the final decision in writing to either:

(a) Modify the key principles or methodology; or

(b) Finalize or adopt the key principles or methodology without modifications.

(2) The Director or designee's decision under Section (1) of this rule shall be issued not later than twenty-one (21) calendar days after receiving the recommendation of the Access Management Dispute Review Board.

Stat. Auth.: ORS 374.310–374.314, 374.345, 374.355, 374.360  
Stats. Implemented: ORS 374.300 to 374.360, §27, ch. 330, OL 2011, ch. 476, OL 2013  
Hist.: HWD 7-2013(Temp), f. 12-23-13, cert. ef. 1-1-14 thru 6-30-14; Temporary suspended by HWD 2-2014, f. 6-25-14, cert. ef. 6-30-14

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**Rule Caption:** Removing Personal Property from Illegal Campsites on State Highway Rights of Way

**Adm. Order No.:** HWD 3-2014(Temp)

**Filed with Sec. of State:** 6-25-2014

**Certified to be Effective:** 6-25-14 thru 12-21-14

**Notice Publication Date:**

**Rules Amended:** 734-035-0010

**Subject:** The Department of Transportation may remove personal property that is left on state highway property. This rule amendment clarifies that the procedure outlined in OAR 734-035-0010 through 734-035-0040 pertains to the removal of personal property specifically from illegal campsites that come to be located on state highway property that is not closed to public entry under OAR 734-035-0200.

**Rules Coordinator:** Lauri Kunze—(503) 986-3171

## 734-035-0010

### Purpose

The purpose of OAR 734-035-0010 through 734-035-0040 is to outline a process for removing personal property from state highway rights of way under ORS 377.650 and 377.653 where state highway real properties are not closed to public entry under OAR 734-035-0200 and the personal property is reasonably believed to be the result of illegal camping.

Stat. Auth.: 184.616, 184.619, 377.653  
Stats. Implemented: ORS 377.650, 377.653  
Hist.: HWY 12-1990(Temp), f. & cert. ef. 7-20-90; HWY 16-1990, f. & cert. ef. 12-28-90; HWD 4-2012, f. 2-21-12, cert. ef. 2-24-12; HWD 3-2014(Temp), f. & cert. ef. 6-25-14 thru 12-21-14

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**Rule Caption:** Designation and Posting of Department Real Property as Closed to Public Entry

**Adm. Order No.:** HWD 4-2014(Temp)

**Filed with Sec. of State:** 6-25-2014

# ADMINISTRATIVE RULES

**Certified to be Effective:** 6-25-14 thru 12-21-14

**Notice Publication Date:**

**Rules Adopted:** 734-035-0200

**Subject:** ODOT owns real property within the State of Oregon, much of which is open to the public only for vehicular use of state highways and other transportation facilities. In addition to real property necessary for the location of state highways and other transportation facilities, ODOT acquires interests in real property outside the state highway right-of-way for purposes including but not limited to mineral resources, equipment and material storage, construction tagging, wetlands and other environmental mitigation, and views and safety sightlines.

The significant majority of these properties are acquired with highway funds dedicated under Article IX, 3a of the Oregon Constitution. As Highway Fund assets, such properties are within the fiduciary responsibility of ODOT. Many of these properties contain steep slopes, unstable rock, water features, utility infrastructure, and other hazards. Public access to ODOT real property for purposes other than transportation use presents an immediate risk to the safety of the individuals accessing the property, the traveling public, and ODOT employees and contractors performing construction, maintenance, operation and other activities. In addition, unauthorized public access to ODOT property outside the highway and its shoulders, ditches, and drainage facilities presents the imminent and appreciable risk of injury to natural, scenic, cultural or archaeological resources. ODOT has a fiduciary duty to safeguard Highway Fund assets, which include real properties. In addition, ODOT must avoid allowing the existence of attractive nuisances on its property to ensure public safety. Further, the unauthorized presence of individuals on ODOT property impairs the operation of vehicles and equipment by ODOT employees and contractors engaged in construction and maintenance activities.

**Rules Coordinator:** Lauri Kunze—(503) 986-3171

## 734-035-0200

### Designation and Posting of Real Property as Closed to Public Entry

(1) The purpose of this rule is to identify the circumstances under which the Department of Transportation will designate and post real property owned or controlled by the department as closed to public entry for purposes other than those authorized by statute, rule or express permission of the department.

(a) The department manager responsible for the real property may designate real property as closed to public entry for the following purposes:

(A) To ensure the safe construction, maintenance, operation and use of transportation facilities;

(B) To ensure the health and safety of department employees, contractors, or the general public;

(C) To prevent damage or loss to department property;

(D) To prevent damage to natural resources, including but not limited to soil, water, wetlands, and other environmentally-sensitive lands;

(E) To prevent damage, vandalism, theft or other loss of cultural or archeological resources.

(b) The department will provide notice of the designation under section (1) in a manner reasonably calculated to apprise the public that entry is prohibited, including but not limited to the posting of conspicuous signage.

(c) Signage posted under this section will, at minimum, include the statement of "No Trespass."

(2) The entry or placing of any personal property upon department real property designated as closed to public entry under this rule is prohibited.

(3) The department will remove, store, and make available for retrieval personal property discovered on department real property designated as closed to public entry under this rule in a manner that is respectful of individual rights to personal property.

Stat. Auth.: 184.616, 184.619 & 377.653

Stats. Implemented: ORS 377.650 & 377.653

Hist.: HWD 4-2014(Temp), f. & cert. ef. 6-25-14 thru 12-21-14

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**Rule Caption:** Removing Personal Property from Illegal Campsites on State Highway Rights of Way

**Adm. Order No.:** HWD 5-2014(Temp)

**Filed with Sec. of State:** 7-9-2014

**Certified to be Effective:** 7-10-14 thru 12-21-14

**Notice Publication Date:**

**Rules Amended:** 734-035-0010

**Subject:** The Department of Transportation may remove personal property that is left on state highway property. This rule amendment clarifies that the procedure outlined in OAR 734-035-0010 through 734-035-0040 pertains to the removal of personal property specifically from illegal campsites that come to be located on state highway property that is not closed to public entry under OAR 734-035-0200.

This rule was originally filed with the Secretary of State on June 25, 2014. It is being refiled to correct a filing error.

**Rules Coordinator:** Lauri Kunze—(503) 986-3171

## 734-035-0010

### Purpose

The purpose of OAR 734-035-0010 through 734-035-0040 is to outline a process for removing personal property from state highway rights of way under ORS 377.650 and 377.653 where state highway real properties are not closed to public entry under OAR 734-035-0200 and the personal property is reasonably believed to be the result of illegal camping.

Stat. Auth.: ORS 184.616, 184.619 & 377.653

Stats. Implemented: ORS 377.650 & 377.653

Hist.: HWY 12-1990(Temp), f. & cert. ef. 7-20-90; HWY 16-1990, f. & cert. ef. 12-28-90; HWD 4-2012, f. 2-21-12, cert. ef. 2-24-12; HWD 3-2014(Temp), f. & cert. ef. 6-25-14 thru 12-21-14; HWD 5-2014(Temp), f. 7-9-14, cert. ef. 7-10-14 thru 12-21-14

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**Rule Caption:** Designation and Posting of Department Real Property as Closed to Public Entry

**Adm. Order No.:** HWD 6-2014(Temp)

**Filed with Sec. of State:** 7-9-2014

**Certified to be Effective:** 7-9-14 thru 12-21-14

**Notice Publication Date:**

**Rules Adopted:** 734-035-0200

**Subject:** ODOT owns real property within the State of Oregon, much of which is open to the public only for vehicular use of state highways and other transportation facilities. In addition to real property necessary for the location of state highways and other transportation facilities, ODOT acquires interests in real property outside the state highway right-of-way for purposes including but not limited to mineral resources, equipment and material storage, construction tagging, wetlands and other environmental mitigation, and views and safety sightlines.

The significant majority of these properties are acquired with highway funds dedicated under Article IX, 3a of the Oregon Constitution. As Highway Fund assets, such properties are within the fiduciary responsibility of ODOT. Many of these properties contain steep slopes, unstable rock, water features, utility infrastructure, and other hazards. Public access to ODOT real property for purposes other than transportation use presents an immediate risk to the safety of the individuals accessing the property, the traveling public, and ODOT employees and contractors performing construction, maintenance, operation and other activities. In addition, unauthorized public access to ODOT property outside the highway and its shoulders, ditches, and drainage facilities presents the imminent and appreciable risk of injury to natural, scenic, cultural or archaeological resources. ODOT has a fiduciary duty to safeguard Highway Fund assets, which include real properties. In addition, ODOT must avoid allowing the existence of attractive nuisances on its property to ensure public safety. Further, the unauthorized presence of individuals on ODOT property impairs the operation of vehicles and equipment by ODOT employees and contractors engaged in construction and maintenance activities.

This rule was originally filed with the Secretary of State on June 25, 2014. It is being refiled to correct a filing error.

**Rules Coordinator:** Lauri Kunze—(503) 986-3171

# ADMINISTRATIVE RULES

## 734-035-0200

### Designation and Posting of Real Property as Closed to Public Entry

(1) The purpose of this rule is to identify the circumstances under which the Department of Transportation will designate and post real property owned or controlled by the department as closed to public entry for purposes other than those authorized by statute, rule or express permission of the department.

(a) The department manager responsible for the real property may designate real property as closed to public entry for the following purposes:

(A) To ensure the safe construction, maintenance, operation and use of transportation facilities;

(B) To ensure the health and safety of department employees, contractors, or the general public;

(C) To prevent damage or loss to department property;

(D) To prevent damage to natural resources, including but not limited to soil, water, wetlands, and other environmentally-sensitive lands;

(E) To prevent damage, vandalism, theft or other loss of cultural or archeological resources.

(b) The department will provide notice of the designation under section (1) in a manner reasonably calculated to apprise the public that entry is prohibited, including but not limited to the posting of conspicuous signage.

(c) Signage posted under this section will, at minimum, include the statement of "No Trespass."

(2) The entry or placing of any personal property upon department real property designated as closed to public entry under this rule is prohibited.

(3) The department will remove, store, and make available for retrieval personal property discovered on department real property designated as closed to public entry under this rule in a manner that is respectful of individual rights to personal property.

Stat. Auth.: ORS 184.616, 184.619 & 377.653

Stats. Implemented: ORS 377.650 & 377.653

Hist.: HWD 4-2014(Temp), f. & cert. ef. 6-25-14 thru 12-21-14; HWD 6-2014(Temp), f. & cert. ef. 7-9-14 thru 12-21-14

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**Rule Caption:** Highway Approach Permitting, Access Control, and Access Management Standards

**Adm. Order No.:** HWD 7-2014

**Filed with Sec. of State:** 7-9-2014

**Certified to be Effective:** 7-9-14

**Notice Publication Date:** 5-1-2014

**Rules Adopted:** 734-051-1065, 734-051-3015

**Rules Amended:** 734-051-1030, 734-051-1040, 734-051-1070, 734-051-2010, 734-051-2020, 734-051-3010, 734-051-3020, 734-051-3040, 734-051-3050, 734-051-3060, 734-051-3070, 734-051-4020, 734-051-5060, 734-051-5120, 734-051-7010

**Rules Repealed:** 734-051-8010(T), 734-051-8015(T), 734-051-8020(T), 734-051-8025(T), 734-051-8030(T)

**Subject:** The 2013 Oregon legislature substantially changed the authorization for how the Oregon Department of Transportation issues permits for access to state highways. OAR 734-051-5120 and 7010 were rewritten in their entirety to comply with the new statutes and 734-051-3015 was added to address new areas of law pertaining to existing approaches that the department may deem to have provided written permission. In addition, the rules include revisions that correct errors, update references, and improve clarity.

These rules replace temporary rules the department adopted in December 2013 to implement SB 408. These rules were originally filed with the Secretary of State on June 25, 2014 and are being refiled to correct a filing error.

**Rules Coordinator:** Lauri Kunze—(503) 986-3171

## 734-051-1030

### Administration of Rules

(1) Approaches Subject to division 51. Private approaches in existence and applications for private approaches filed after June 30, 2014 are governed by the rules of division 51. Public approaches do not require an Approach Permit but are subject to the provisions of OAR 734-051-1050.

(2) Grandfathered Approaches. Division 51 rules do not affect existing rights of owners of grandfathered approaches that meet the definition in OAR 734-051-1070(30), except where the rules specifically state their application to grandfathered approaches, such as the rule for changes of use

of an approach under 734-051-3020. An approach no longer qualifies as grandfathered once the department issues a Permit to Operate under division 51 rules or the department acquires access control as defined under 734-051-1070.

(3) Compliance with Land Use Requirements. Approval of a property for a particular use is the responsibility of city, county, or other governmental agencies, and an applicant must obtain appropriate approval from city, county, or other governmental agencies having authority to regulate land use. Approval of an application for an approach to a state highway, or issuance of a construction permit or a Permit to Operate for the same, is not a finding of compliance with statewide planning goals or an acknowledged comprehensive plan.

(4) General Requirements for Notices of Appealable Decisions and Other Written Communication. The department will provide notice of appealable decisions by certified mail to the applicant. Notice of non-appealable decisions and other written communication will be by first class mail, unless written agreement is made with the applicant for such communication through electronic means such as email.

(5) Reasonable Access. Pursuant to ORS 374.310, the division 51 rules may not be exercised so as to deny any property that has a right of access reasonable access to the highway. ORS 374.312 authorizes adoption of rules establishing criteria for reasonable access consistent with 374.310. The rules under OAR 734-051-4020 address reasonable access solely in the context of the issuance of approach permits and do not affect whether access may be reasonable for other purposes or under other reviews.

Stat. Auth.: ORS 184.616, 184.619, 374.310-374.314, 374.345 & 374.355

Stats. Implemented: ORS 374.300-374.360, §27, 2011 OL Ch. 330

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12; HWD 2-2014, f. 6-25-14, cert. ef. 6-30-14; HWD 7-2014, f. & cert. ef. 7-9-14

## 734-051-1040

### Relationship to Local Jurisdiction Rules and Regulations

(1) Where ODOT and Local Jurisdiction Agree on Standards or Requirements. Where ODOT and a local jurisdiction have agreed to access spacing standards, sight distance standards or channelization requirements in an adopted facility plan that is different that the adopted standards in this rule, the agreed upon standard will be considered consistent with the standards adopted by this rule and with OAR 660-012-0015 and shall be applied to the state highways within that jurisdiction.

(2) Where Local Jurisdiction Standards or Requirements Exceed OAR 734-051. Where a local jurisdiction has adopted access spacing standards, sight distance standards or channelization requirements that are more stringent than the standards adopted by these rules or allow less access to the state highway than the standards adopted in these rules, the local standards shall be considered to be consistent with the state standards and with 660-012-0015 and shall be applied to state highways within that jurisdiction.

(3) Where OAR 734-051 Exceeds Local Jurisdiction Standards or Requirements. Where a local jurisdiction has adopted access spacing standards, sight distance standards or channelization requirements that are less stringent than the standards adopted by these rules or provide greater access to the state highway than those standards adopted by these rules, the local standards shall be deemed to be inconsistent with these rules and with 660-012-0015 and shall not be applied to state highways within the local jurisdiction.

Stat. Auth.: ORS 184.616, 184.619, 374.310-374.314, 374.345 & 374.355

Stats. Implemented: ORS 374.300-374.360, §27, Ch. 330, OL 2011

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12; HWD 2-2014, f. 6-25-14, cert. ef. 6-30-14; HWD 7-2014, f. & cert. ef. 7-9-14

## 734-051-1065

### Restriction of Turning Movements for Existing Private Approaches

(1) Applicability

The department may restrict turning movements onto a state highway from an approach for which a permit was issued under OAR 734-051-3010 or that is deemed to have written permission under 734-051-3015 when the restriction is not required by contract, condemnation judgment, recorded deed or a Permit to Operate.

(2) Procedures and Circumstances

(a) The department may restrict turning movements under this rule for circumstances that include the following:

(A) Safety and highway operations concerns set forth in OAR 734-051-4020(3); or

(B) To prevent roadway departure crashes, particularly head-on type crashes and sideswipe meeting type crashes; or

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(C) Where drainage facilities are required in the median of the highway; or

(D) To provide a two-stage or multi-stage pedestrian and/or bicycle crossing; or

(E) Pursuant to local government projects and land use decisions.

(b) When the department is evaluating the need to restrict turning movements under this rule, the department shall engage the following:

(A) Owners of property abutting the highway that will be affected by the restriction;

(B) Property lessees and business operators abutting the highway that will be affected by the restriction;

(C) The local jurisdiction with land use authority in the area of the restriction;

(D) A representative of the freight industry; and

(E) Other stakeholders as appropriate.

(c) Prior to implementing a turning restriction, the department will provide written notification to the parties listed in (a) of its decision to implement the restriction.

(d) A non-traversable median may not be used as mitigation for an approach road permit unless the department first establishes that no other measures will be effective for the circumstances.

Stat. Auth.: ORS 184.616, 184.619, 374.310–374.314, 374.345 & 374.355

Stats. Implemented: ORS 374.345 & 374.312

Hist.: HWD 2-2014, f. 6-25-14, cert. ef. 6-30-14; HWD 7-2014, f. & cert. ef. 7-9-14

## 734-051-1070

### Definitions

(1) “Access Control” means that the right of access between a property abutting the highway and the highway has been acquired by the department or eliminated by law.

(2) “Access Management Strategy” means a project delivery strategy developed by the Department of Transportation, in collaboration with cities, counties and owners of real property abutting a state highway in the affected area, that identifies the location and type of public and private approaches and other necessary improvements that are planned to occur primarily in the highway right of way and that are intended to improve current conditions on the section of highway by moving in the direction of the objective standards described in ORS 374.311, subject to safety and highway operations concerns.

(3) “Access Management Plan” means a facility plan adopted by the Oregon Transportation Commission in coordination with affected local governments for managing access on a designated section of highway or within the influence area of an interchange. An access management plan may establish a unique access plan and access management standards for the designated section of highway or influence area of an interchange, and may be more stringent than standards adopted under OAR 734-051-4020. It may be developed independent of or in conjunction with a highway or interchange project; however, an access management plan is not a highway or interchange project.

(4) “Alternate Access” means the right to access a property by means other than the proposed approach. It may include an existing public right of way, another location on the subject state highway, an easement across adjoining property, a different highway, a service road, a local road, or an alley, and may be in the form of a single or joint approach. The existence of alternate access is not a determination that the alternate access is “reasonable” as defined in ORS 374.310.

(5) “Annual average daily traffic” means highway traffic volumes as reported in the most recent edition of the transportation volume tables published annually by the department.

(6) “Appealable decision” means a final decision by the department where the applicant has a right to a dispute resolution procedure to review the department’s decision as set forth in OAR 734-051-3080 through 3110. The following are appealable decisions:

(a) A decision to deny an application for an approach permit;

(b) A decision to deny an application for a deviation from approach permitting standards;

(c) A decision to impose mitigation measures as a condition of approval of an approach application or as a condition of approval of a deviation from the general approval criteria set forth in OAR 734-051-4020(2);

(d) A decision to remove a connection for which the department has issued a Permit to Operate or written permission as grandfathered, or which the department deems to have written permission as set forth in OAR 734-051-3015.

(7) “Applicant” means a person, corporation, or other legal entity with a legal property interest, including a lease, option or reservation of

access, to land abutting the highway that applies for an approach permit or a deviation from approach permitting standards, or their designated agent.

(8) “Application” means a completed application form for state highway approach including any required documentation and attachments necessary for the department to determine if the application can be deemed complete.

(9) “Approach” means a legally constructed public or private connection that provides vehicular access to or from a state highway that:

(a) Has written permission under a Permit to Operate issued by the department under OAR 734-051-3010; or

(b) The department has recognized as grandfathered under OAR 734-051-1070(29); or

(c) The department does not rebut as having a presumption of written permission under OAR 734-051-3015.

(10) “Average Daily Trips” means the total of all one-direction vehicle movements with either the origin or destination inside the study site that includes existing, primary, pass by, and diverted linked trips and is calculated in accordance with the procedures contained in Trip Generation Manual, 9th Edition published by the Institute of Transportation Engineers (ITE). Adjustments to the standard rates in the ITE Manual for mode split may be allowed if calculated in accordance with Transportation Planning Rule and the ITE procedures. Adjustments to the standard rates for multi-use internal site trips may be allowed if calculated in accordance with ITE procedures and if the internal trips do not add vehicle movements to the approaches to the highway.

(11) “Channelization” means the roadway lane configuration necessary to safely accommodate turning movements from the highway to an intersecting approach.

(12) “Classification of highways” means the department’s state highway classifications defined in the Oregon Highway Plan.

(13) “Commission” means the Oregon Transportation Commission.

(14) “Connection” means an existing approach as defined in (9) or an unpermitted means of vehicular access to or from a state highway and an abutting private property, city street or county road.

(15) “Construction Permit” means a permit to construct or modify a state highway approach including all attachments, required signatures, and conditions and terms.

(16) “Crash history” means at least the three most recent years of crash data recorded by the department’s crash analysis and reporting unit.

(17) “Day” means calendar day, unless specifically stated otherwise.

(18) “Deemed complete” means acknowledgement by the department that it has received all required information from the applicant for a complete application for an approach permit or for a request for a deviation from approach permit standards.

(19) “Department” or “ODOT” means the Oregon Department of Transportation.

(20) “Deviation” means an exception from the access management spacing, sight distance or channelization standards set forth in OAR 734-051-4020.

(21) “Director” means the director of the Oregon Department of Transportation.

(22) “District highway” means a state highway that has been classified by the commission as a district highway in the Oregon Highway Plan.

(23) “Division 51” (“this division”) means Oregon Administrative Rules (OAR) 734-051-1010 through 734-051-7010.

(24) “Expressway” means a state highway that has been designated by the commission as an expressway in the Oregon Highway Plan.

(25) “Facility Plan” means a plan developed by the department for a state highway facility, including but not limited to corridor facility plans, and transportation refinement plans.

(26) “Fair Market Value” means the amount in cash, or on terms reasonably equivalent to cash, for which in all probability the property would be sold by a knowledgeable owner willing but not obligated to sell to a knowledgeable purchaser who desired but is not obligated to buy.

(27) “Freeway” means a route or segment of highway that is completely access controlled and access limited to grade separated interchanges.

(28) “Freeway or Expressway ramp” means all types, arrangements, and sizes of turning roadways that connect to a freeway or expressway interchange.

(29) “Functional Area of an Intersection” means the intersection and the area beyond the intersection that comprises decision and maneuver distance, plus any required vehicle storage length.

(30) “Grandfathered approach” means an approach that the department has recognized in documentation dated prior to January 1, 2014 as

## ADMINISTRATIVE RULES

having grandfathered status under the rules in effect on the date of the documentation. An approach that is recognized as having grandfathered status is treated in the same manner as a Permit to Operate under Division 51 rules unless otherwise noted.

(31) "Grant of Access" means the conveyance of a right of access from the department to an abutting property owner.

(32) "Highway mobility standards" mean the performance standards for maintaining mobility as adopted by the commission in the Oregon Highway Plan.

(33) "Highway peak hour" means the highest one-hour volume observed on an urban roadway during a typical or average week, or the thirtieth (30th) highest hourly traffic volume on a rural roadway typically observed during a year.

(34) "Highway designation" means a designation made by the Oregon Transportation Commission to a defined route or segment that is in addition to highway classification and that modifies the system management goals for the designated part of the highway. Highway designations include but are not limited to expressways, freight routes, special transportation areas, scenic routes and lifelines.

(35) "Indenture of Access" means a deeded conveyance to the abutting property owner to change the location, width, or use restrictions of a reservation of access. Removal of a farm crossing or farm use restriction from a reservation of access requires a grant of access.

(36) "Infill" ("Infill Development") means development of vacant or remnant land passed over by previous development and that is consistent with zoning. Infill occurs in urban areas. It may also occur in rural areas on commercial or industrial zoned land where the land has been developed into an urban block pattern including a local street network, and the posted highway speed is at or below forty-five (45) miles per hour.

(37) "Influence area of an interchange" means the area 1,320 feet from an interchange ramp terminal measured on the crossroad away from the mainline.

(38) "Interchange" means a system of interconnecting roadways in conjunction with one or more grade separations that provides for the movement of traffic between two or more roadways or highways on different levels.

(39) "Intersection" means an at-grade connection of a public or private road to the highway.

(40) "Interstate highway" means a state highway that has been classified by the commission as an interstate highway in the Oregon Highway Plan.

(41) "Land Use Action" means an action by a local government or special district concerning the adoption, amendment or application of the statewide planning goals, a comprehensive plan provision or a land use regulation including zoning, development or subdivision codes.

(42) "Land Use Regulations" means local jurisdiction zoning and development codes, including regulation of land use, zoning, subdivisions, land partitions, access, site plans, and similar regulations adopted pursuant to ORS 197, for cities, and ORS 215, for counties.

(43) "Median" means the portion of the roadway separating opposing traffic streams.

(44) "Mitigation Measure" means an improvement, modification, or restriction set forth in OAR 734-051-3070 and required by the department or initiated by an applicant necessary to offset impacts of the development and provide for safe operation of the highway and proposed approach. Mitigation measures may be a condition of approval for a deviation from approach permitting standards or an application for an approach permit.

(45) "Move in the direction of" means a change in an existing private connection that would bring the connection closer to conformity with access spacing, sight distance, or channelization standards set forth in OAR 734-051-4020. The process and criteria for moving in the direction of access spacing, sight distance, or channelization standards are set forth in OAR 734-051-3020(7) through (11).

(46) "Oregon Highway Plan" means the Oregon Highway Plan adopted by the Oregon Transportation Commission, pursuant to ORS 184.618.

(47) "Peak hour", for the purpose of approach applications made under OAR 734-051-3020 (Change of Use), means the hour during which the highest volume of traffic enters and exits the property during a typical week.

(48) "Permit to Construct" means a permit that is issued by the department that includes all attachments, required signatures, conditions and terms, and any bond and insurance documentation provided by the applicant as required by the department to construct or modify an approach and any related mitigation within the state highway right of way.

(49) "Permit to Operate" means written permission issued by the department to operate, maintain and use an approach to the state highway, including all required signatures and attachments, and conditions and terms. A Permit to Operate is not required for a public approach but the department may issue a Permit to Operate for a public approach upon agreement with the governing city or county.

(50) "Permittee" means a person, corporation, or other legal entity holding a valid Permit to Operate including the owner or lessee of the property abutting the highway or their designated agent.

(51) "Permitted approach" means a legally constructed approach connecting to a state highway for which the department has issued a valid Permit to Operate.

(52) "Planned" road or street means a highway, road, street or alley identified in an adopted corridor plan, comprehensive plan or transportation system plan in accordance with administrative procedures of OAR 660-012 and ORS Chapter 197 but has not been constructed.

(53) "Posted speed" means the statutory speed established by ORS 811.105 or 811.180, or the designated speed established by 810.180.

(54) "Prior use" of an approach means the number of peak hour or average daily trips:

(a) Authorized by the Permit to Operate issued by the department; or

(b) Authorized by the department for a grandfathered approach in the documentation recognizing the approach as grandfathered; or

(c) Based on the use of the property on January 1, 2014 for approaches that the department does not rebut as having a presumption of written permission under OAR 734-051-3015.

(55) "Private approach" means an approach that serves one or more properties and that is not a public approach.

(56) "Private road crossing" means a privately owned road designed for use by trucks that are prohibited by law from using state highways, county roads or other public highways.

(57) "Professional Engineer," for the purpose of OAR 734-051, means a person who is registered and holds a valid license to practice engineering in the State of Oregon, as provided in ORS 672.002 through 672.325 and OAR 820-001 through 820-040.

(58) "Project Delivery" means the process of programming, designing and constructing modernization and highway improvement projects identified in the Statewide Transportation Improvement Program.

(59) "Public approach" means an existing or planned city street or county road connection that provides vehicular access to and from a highway. An existing city street or county road connection must be under the authority of the city or county to be considered a public approach. A planned city street or county road must be consistent with OAR 731-051-1070(52), included as part of a corridor plan, local transportation system plan or comprehensive plan, and must be or come under the authority of the city or county to be considered a public approach.

(60) "Receipt of an application" means the date the department date-stamps an application as received.

(61) "Redevelopment" ("Infill Redevelopment") means the act or process of changing an existing development including replacement, remodeling, or reuse of existing structures to accommodate new development that is consistent with current zoning. Redevelopment occurs in urban areas. It may also occur in rural areas on commercial or industrial zoned land where the land has been developed into an urban block pattern including a local street network, and the posted highway speed is at or below forty-five (45) miles per hour.

(62) "Region Access Management Engineer" means a professional engineer employed by the department who by training and experience has comprehensive knowledge of the department's access management rules, policies, and procedures, or a professional engineer as specified in an inter-governmental agreement delegating permitting authority as set forth in OAR 734-051-1060.

(63) "Region Manager" means the person in charge of one of the department's Transportation Regions or designated representative.

(64) "Regional highway" means a state highway that has been classified by the commission as a regional highway in the Oregon Highway Plan.

(65) "Reservation of Access" means a right of access to a specific location in an area where the department has acquired access control subject to restrictions that are designated in a deed. A reservation of access may include a use restriction limiting the right of access to a specified use or restriction against a specified use. A reservation of access affords the right to apply for an approach but does not guarantee approval of an application for state highway approach or the location of an approach.

(66) "Right of access" means the property right of an abutting property owner to ingress and egress to the roadway. A right of access includes

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a common law right of access, or may be conveyed through operation of law or by deed as a reservation of access, or grant of access.

(67) "Right of way" means real property or an interest in real property owned by the department for the purpose of constructing, operating and maintaining public transportation facilities.

(68) "Rule, this" ("this rule") means the part of OAR 734, division 51, as designated by the four-digit suffix, in which the reference to "this rule" appears. For example, this rule ("Definitions") is OAR 734-051-1070.

(69) "Rural" means the area outside the urban growth boundary, the area outside a Special Transportation Area in an unincorporated community, or the area outside an Urban Unincorporated Community defined in OAR 660-022-0010.

(70) "Sight distance" means a length of highway that a driver can see with an acceptable level of clarity.

(71) "Signature" means the signature of each property owner or the authorized agent of the corporation.

(72) "Spacing standards" means the access management spacing standards set forth in OAR 734-051-4020.

(73) "Special Use Approach" means an approach that is intended to provide vehicular access for a specific use and for a limited volume of traffic. Such uses are determined by the department and may include emergency services, government, and utility uses. Mitigation required as a part of an approach permit approval or a condition on a construction permit does not by itself create a "special use approach."

(74) "State highway" means a highway that is under the jurisdiction of the Oregon Department of Transportation.

(75) "Statewide highway" means a state highway that has been classified by the commission as a statewide highway in the Oregon Highway Plan.

(76) "Temporary approach" means an approach that is constructed, maintained, and operated for a specified period of time not exceeding two years, and removed at the end of that period of time.

(77) "Traffic Impact Analysis" means a report prepared by a professional engineer that analyzes existing and future roadway conditions.

(78) "Trip" means a one-way vehicular movement that consists of a motor vehicle entering or exiting a property.

(79) "Unincorporated community" means a settlement that is not incorporated as a city and that lies outside the urban growth boundary of any city.

(80) "Urban" means the area within the urban growth boundary, within a Special Transportation Area of an unincorporated community, or within an Urban Unincorporated Community defined in OAR 660-022-0010.

(81) "Vehicular Access" means the location where motorized vehicles move to and/or from a street, roadway, highway or alley and an abutting property.

(82) "Workday" means Monday through Friday and excludes holidays and days state offices are closed.

Stat. Auth.: ORS 184.616, 184.619, 374.310-374.314, 374.345, 374.355  
Stats. Implemented: ORS 374.300-374.360, §27, ch. 330, OL 2011  
Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12; HWD 2-2014, f. 6-25-14, cert. ef. 6-30-14; HWD 7-2014, f. & cert. ef. 7-9-14

## 734-051-2010

### General Provisions

(1) Right of Access Required for Private Approach. In order for the department to approve an application requesting a private approach, the property for which application is made must have a right of access to the state highway as defined in OAR 734-051-1070. A right of access or a recorded easement establishing a right of access does not guarantee approval of an approach permit. Where no right of access exists, an application for a grant of access must be submitted before an application for state highway approach will be deemed complete. The department will not approve a grant of access where an application for approach permit cannot be approved.

(2) Right of Access Required for Public Approach. Where no right of access exists, a local jurisdiction must submit an application for a grant of access with its application to construct a public approach. The department will not approve a grant of access where an application to construct a public approach cannot be approved.

(3) Request to Verify Right of Access. Upon request, the department shall verify whether a property abutting the state highway has a right of access and identify any restrictions or limitations of the right.

(4) Removal of Farm Use Restrictions. Removing a farm crossing or farm use restriction from a reservation of access requires a grant of access from the department.

Stat. Auth.: ORS 184.616, 184.619, 374.310-374.314, 374.345 & 374.355

Stats. Implemented: ORS 374.300-374.360, §27, ch. 330, OL 2011  
Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12; HWD 2-2014, f. 6-25-14, cert. ef. 6-30-14; HWD 7-2014, f. & cert. ef. 7-9-14

## 734-051-2020

### Grants of Access

(1) Grant of Access. The department may approve an application for a grant of access only when the provisions in sections (2) through (6) below are fully complied with.

(2) Restricted Areas.

(a) The department shall not approve an application for a grant of access for a private approach:

- (A) On an interstate highway or freeway ramp;
- (B) On an expressway or expressway ramp;
- (C) Opposite a freeway or expressway ramp terminal; or
- (D) In the influence area of an interchange.

(b) The department shall not approve an application for a grant of access for a public approach on a freeway, freeway ramp, or an expressway ramp.

(c) The department shall not approve an application for a grant of access to serve a public approach aligned opposite a freeway or expressway ramp or within the influence area of an interchange unless the public approach is included in an interchange area management or facility plan approved by the ODOT chief engineer and adopted by the commission.

(3) Criteria for Grant of Access for a Private Approach. The department may approve an application for a grant of access where all of the following conditions are met:

(a) An applicant submits an application for state highway approach, as set forth in OAR 734-051-3010 through 734-051-3030, with its application for a grant of access, as set forth by this rule;

(b) The applicant meets the requirements for issuance for a construction permit, as set forth in OAR 734-051-5020;

(c) The applicant agrees in writing to meet any mitigation measures, terms, and conditions placed on the approval of the grant of access, construction permit and the Permit to Operate;

(d) One of the following in (A) or (B) occurs:

(A) The department determines that access control is no longer needed at the location specified in the application for a grant of access as set forth in section (5) of this rule; or

(B) The applicant establishes that the grant of access will benefit the state highway system as set forth in OAR 734-051-4030;

(e) Alternate access to the property is not and cannot be made reasonable pursuant to sections (6) and (7) of OAR 734-051-4020;

(f) The property owner must agree to deed restrictions that ensure that future development intensity and trip generation can be safely accommodated by the state transportation system; and

(g) The technical services manager approves an application for a grant of access.

(4) Criteria for Grant of Access for a Public Approach. The department may approve an application for a grant of access for a public approach to a state highway where all of the following conditions are met:

(a) A local jurisdiction submits an application for a grant of access, as set forth in sections (6) through (8) of this rule;

(b) The grant of access is consistent with the Oregon Highway Plan and a local transportation system plan; or, in the absence of a transportation system plan, a grant of access may be considered where the local jurisdiction has explored all practicable alternatives to the connection, including parallel streets and the purchase of additional right of way;

(c) One of the following occurs:

(A) The department determines that access control is no longer needed at the location specified in the application for a grant of access as set forth in section (5) of this rule; or

(B) The local jurisdiction provides sufficient evidence for the department to establish that the grant of access will benefit the state highway system as set forth in (i) or (ii) below:

(i) The proposed connection is a public facility with a functional classification of collector or higher and is identified in an adopted transportation system plan consistent with OAR 660-012-0000 through 660-012-0070; or

(ii) The technical services manager determines that the grant of access will provide a benefit to the state highway pursuant to OAR 734-051-4030.

(d) The department and the local jurisdiction requesting a grant of access for a public approach:

(A) Shall enter into an intergovernmental agreement, as set forth in OAR 734-051-1050, that details the responsibility for construction, main-

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tenance, operation, mitigation measures and cost of the public approach; and

(B) May enter into an intergovernmental agreement that addresses transportation plan and land use amendments or modifications to ensure that trip generation and traffic operations from planned development can be safely supported on the state transportation system.

(5) Factors to Determine if Access Control is Still Needed. For the purposes of determining whether access control is still needed, per subsections (3)(d)(A) and (4)(c)(A) of this rule, at the proposed location for a grant of access, the department shall consider factors including but not limited to those in (a) through (g):

- (a) Classification of the highways and highway designations;
- (b) Spacing standards;
- (c) Highway mobility standards;
- (d) State and local transportation system plans;
- (e) Comprehensive plan and land uses in the area;
- (f) Safety and operational factors; and
- (g) Sight distance standards.

(6) Applicant for Grant of Access. The applicant for a grant of access must be the owner of the property abutting the highway right of way or the owner's designated agent.

(7) Complete Application for Grant of Access. A complete application for grant of access to a state highway consists of a completed and signed standard state form, a complete application for a state highway approach, including all required documentation, deposit toward processing fee for a grant of access pursuant to this rule, and a current preliminary title report covering the property to be served by the approach, showing any access easements appurtenant to the property; the department shall not process an application for grant of access that is incomplete.

(8) Fees and Deposit Toward Processing Fee. The applicant shall pay all costs incurred by the department in processing the application for a grant of access. An initial deposit to cover the processing fee is required for an application for a grant of access. The total or final processing fee is based on the actual documented costs incurred by the department plus a ten (10) percent charge for general administration:

(a) The department shall determine the amount of the initial deposit based on the complexity of the request and the anticipated cost of obtaining an appraisal of the grant of access;

(b) The initial deposit is applied towards the total or final processing fee; and

(c) The total or final processing fee includes the cost to secure an appraisal of the fair market value of the grant of access.

(9) Review Process. Upon acceptance of an application for grant of access and any required documentation, the department shall evaluate the application pursuant to division 51, ORS Chapter 374, and any other applicable state statutes, administrative rules, and department manuals for evaluating and acting upon the application for a grant of access, and shall:

(a) Forward the application for grant of access to the state traffic engineer for processing pursuant to section (10) of this rule; or

(b) Based on the applicable rules, statutes, or department manuals, deny the application for grant of access.

(10) Review by State Traffic Engineer. When the application for grant of access is forwarded to the state traffic engineer, the state traffic engineer, with the assistance of department staff, shall:

(a) Evaluate the application for grant of access;

(b) Notify the applicant of any additional information required; and

(c) Make a recommendation to approve or deny the application for a grant of access to the technical services manager and the technical services manager shall conditionally approve or deny the application for grant of access subject to identified conditions of approval, and payment of the appraised value. The technical services manager shall provide written notification of the conditional decision to the applicant.

(11) Appraisal. If the application for grant of access is conditionally approved, the department shall:

(a) Appraise the abutting property to determine the fair market value of the grant of access;

(b) Notify the applicant of the value of the grant of access; and

(c) Provide the applicant with instructions for payment.

(12) Payment for Grant of Access. Except as provided by section (13) of this rule, upon approval of an application for a grant of access and prior to issuance of the deed of the grant of access, payment must be made to the department in an amount equal to the appraised value of the grant of access; this payment is in addition to the processing fee.

(13) Waiver of Payment. The department may waive payment of the appraised value of the grant of access when an application for a grant of

access is for a public approach and the department has determined that the public approach will cause a direct and immediate benefit the state highway system as set forth in OAR 734-051-4030.

(14) Execution and Recording. After payment of fair market value is received by the department:

(a) The grant of access will be executed and recorded; and

(b) A copy of the grant of access will be sent to the region manager so that a construction permit may be issued in accordance with OAR 734-051-5020 for a private approach and 734-051-1050 for a public approach.

Stat. Auth.: ORS 184.616, 184.619, 374.310-374.314, 374.345 & 374.355

Stats. Implemented: ORS 374.300-374.360, §27, ch. 330, OL 2011

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12; HWD 2-2014, f. 6-25-14, cert. ef. 6-30-14; HWD 7-2014, f. & cert. ef. 7-9-14

## 734-051-3010

### Permit for Private Approach

(1) Applicability. This rule applies to applications for state highway approach permits for private approaches.

(2) Restricted Areas. The department shall not issue an approach permit to a freeway, a freeway ramp, or an expressway ramp, or an approach that would be aligned opposite a freeway or expressway ramp terminal.

(3) Rules in Effect. An application for an approach permit shall be subject to the rules in effect on the date the application was filed. The department shall use OAR 734, division 51, and ORS 374, and may use other applicable statutes or administrative rules to evaluate and act on an application.

(4) Approach Permit Approval Criteria. The department shall approve an application for an approach based upon a determination that it meets all of the following criteria:

(a) The department determines that a complete application has been submitted pursuant to OAR 734-051-3030;

(b) The department determines that the application is consistent with any applicable facility plans adopted by the Oregon Transportation Commission, including special transportation area plans, facility plans, corridor plans;

(c) Except where paragraphs (A) through (D) of this subsection apply, the department determines that the proposed approach meets the spacing, channelization and sight distance standards of OAR 734-051-4020, or the department approves a deviation from these standards under OAR 734-051-3050 which may include mitigation measures pursuant to OAR 734-051-3070;

(A) OAR 734-051-3020 applies to applications for change of use of a private approach.

(B) OAR 734-051-4020(5) applies to applications for properties with no alternate access.

(C) OAR 734-051-4040 applies to applications for temporary approaches.

(D) OAR 734-051-4050 applies to applications for special use approaches.

(d) The department determines that the approach does not create or contribute to a safety or highway operations concern, as identified in OAR 734-051-4020(3), or such concerns are sufficiently mitigated pursuant to OAR 734-051-3070.

(5) Cooperative Improvement Agreement. A written agreement between the applicant and the department may be required. The agreement will address transfer of ownership of the improvements to ODOT, work standards that must be followed, any maintenance responsibilities of the applicant, and other requirements that apply to the work. ODOT may withhold issuance of a Permit to Construct under 734-051-5020 or a Permit to Operate, Maintain, and Use an Approach under 734-051-5080 until the agreement is fully executed by all parties. ODOT will work with the applicant to identify the need and develop the provisions for the agreement early in the permitting process in order to avoid delays in obtaining permits.

Stat. Auth.: ORS 184.616, 184.619, 374.310-374.314, 374.345 & 374.355

Stats. Implemented: ORS 374.300-374.360, §27, ch. 330, OL 2011

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12; HWD 2-2014, f. 6-25-14, cert. ef. 6-30-14; HWD 7-2014, f. & cert. ef. 7-9-14

## 734-051-3015

### Presumption of Written Permission for an Existing Private Connection

(1) Applicability. This rule applies to those existing private connections for which the department has not:

(a) Issued a Permit to Operate in accordance with OAR 734-051-3010 (Permit for Private Approach); or

(b) Issued a Permit to Operate under section (3) of this rule; or

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(c) Issued documentation recognizing the connection as grandfathered under OAR 734-051-1070 (Definitions).

(2) **Presumption of Written Permission.**

(a) An owner of real property abutting a state highway with a connection to a state highway that existed on January 1, 2014 is presumed to have the Department of Transportation's written permission for the connection based upon documentation for a highway project completed by the department that shows that the connection was built or rebuilt as part of a highway project or that the department intended to issue an approach permit to the property owner for the connection.

(b) An owner of real property abutting a state highway with a connection that was in existence before April 1, 2000, is also presumed to have the department's written permission for the connection based upon documentation in any form that shows:

(A) That the connection was in existence before July 16, 1949; or

(B) That the connection was in existence before the department accepted jurisdiction of the highway from a city or county; or

(C) That the connection was built or rebuilt to the abutting property with the department's knowledge or permission.

(c) There is no presumption of written permission under this rule where there is not a right of access to the state highway as defined in OAR 734-051-1070 (Definitions).

(d) Connections presumed to have written permission under this section are subject to OAR 734-051-3020 (Change of Use of a Private Connection) as set forth in section 4 of this rule.

(e) An owner of real property with a connection presumed to have written permission under this section is responsible for the cost and performance of maintaining the connection in accordance with OAR 734-051-5090 (Maintenance of Approaches).

(f) The department may rebut that an existing connection has a presumption of written permission under section 7 of this rule.

(3) **Issuance of a Permit to Operate.** The department may issue a Permit to Operate for a connection that it does not rebut as having a presumption of written permission if a change of use has not occurred as set forth in OAR 734-051-3020.

(4) **New Application Required for Change of Use.** Connections deemed to have a presumption of written permission under section 2 of this rule are subject to the requirements and procedures for change of use as set forth in OAR 734-051-3020.

(a) If the department determines that the connection meets one of more of the criteria for a change of use as set forth in 3020(2), the property owner is required to submit a new application for all approaches to the property as set forth in OAR 734-051-3020(1) and 734-051-3030 (Application Requirements for State Highway Approach).

(b) For the purposes of OAR 734-051-3020(2)(a) and (b), prior use is the use of the property on January 1, 2014. For the purposes of 734-051-3020(2)(c), the increase in daily use of a connection by vehicles with a gross vehicle weight rating of twenty-six thousand (26,000) pounds or greater is based on the use of the connection on January 1, 2014.

(5) **Removal of a Connection.** If the department intends to remove a connection that it does not rebut as having a presumption of written permission, the department shall provide notification as set forth in OAR 734-051-5110(2) and the removal shall be subject to the post-decision review processes of 734-051-3080 through 3110 and remedies as set forth in 734-051-6010 through 6070.

(6) **Connections Located on Open Frontage.** Open frontage refers to a large open area along the highway right of way where the location for entry to or exit from an abutting property is not clearly defined. For the purposes of sections 2 and 3 of this rule, the department shall determine the location and dimensions of the connection within open frontage that it deems to have provided written permission in collaboration with the property owner(s) and, where possible, the property lessees and business operators. The department shall consider the land use served by the connection on January 1, 2014 and the current standards of the Oregon Highway Design Manual.

(7) **Department Rebuttal of a Presumption of Written Permission.**

(a) The department shall have the burden to establish that the factual basis for a presumption of written permission under sections 2(a) and (b) of this rule does not exist.

(b) The department may rebut the presumptions of written permission by establishing the following:

(A) A search of department as-constructed plans for highway projects where the connection is located do not show a note to build or rebuild the connection as part of a project; and

(B) Neither the department nor the property owner have written documentation indicating that ODOT approved issuance of a permit to construct or a Permit to Operate for the connection; and

(C) For connections that existed prior to April 1, 2000:

(i) Photographic evidence or other historical documentation indicates that the connection was established after July 16, 1949; and

(ii) Photographic evidence or other historical documentation indicates that the connection did not exist before the date that the department accepted jurisdiction of the highway; and

(iii) Written documentation from the department to the property owner dated prior to January 1, 2014 indicates that construction of the connection was not authorized or that the connection is no longer authorized by the department for the reasons specified in the documentation.

(c) If the department establishes that an existing connection does not have the presumption of written permission under this rule, then:

(A) The connection is subject to removal or reconstruction as provided in ORS 374.307 and the property owner is not entitled to file a claim for relief under OAR 734-051-6010; and

(B) The department shall not offer an administrative remedy under OAR 734-051-6020 through 6070.

Stat. Auth.: ORS 184.616, 184.619, 374.310-374.314, 374.345 & 374.355

Stats. Implemented: ORS 374.300-374.360, §27, ch. 330, OL 2011

Hist.: HWD 2-2014, f. 6-25-14, cert. ef. 6-30-14; HWD 7-2014, f. & cert. ef. 7-9-14

## 734-051-3020

### Change of Use of a Private Connection

(1) **Applicability.**

(a) This rule sets forth procedures and requirements for a change of use of an existing private connection to a state highway.

(b) A new application is required for the purpose of permitting all connections to a property when there is a change of use as set forth in section (2) of this rule. All connections to the property are subject to this rule whether they exist under a Permit to Operate, are grandfathered under OAR 734-051-1070(29), or the department provides written permission under 734-051-3015.

(2) **Changes of Use Requiring an Application for State Highway Approach.** Except as provided under section (5) of this rule, a new application is required for a change of use when any one of the following:

(a) The number of peak hour trips increases by fifty (50) trips or more from that of the property's prior use and the increase represents a twenty (20) percent or greater increase in the number of peak hour trips from that of the property's prior use; or

(b) The average daily trips increases by five hundred (500) trips or more from that of the property's prior use and the increase represents a twenty (20) percent or greater increase in the average daily trips from that of the property's prior use; or

(c) The daily use of a connection increases by ten (10) or more vehicles with a gross vehicle weight rating of twenty-six thousand (26,000) pounds or greater; or

(d) ODOT demonstrates that safety or operational concerns related to the connection are occurring as identified in OAR 734-051-4020(3); or

(e) The connection does not meet the stopping sight distance standards, as measured in feet, of ten (10) times the speed limit established in ORS 811.111 or the designated speed posted under 810.180 for the highway as measured in miles per hour, or ten (10) times the 85th percentile speed of the highway where the 85th percentile speed is higher or lower than the speed limit established in 811.111 or the designated speed posted under 810.180. The applicant may perform a study to determine if the 85th percentile speed is higher or lower than the speed limit established in 811.111 or the designated speed posted under 810.180. The sight distance measurement, as described in OAR 734-051-4020(2)(c)(A)-(B), and the study to determine the 85th percentile speed shall be performed according to published department procedures by or under the supervision of a professional engineer as defined in 734-051-1070. The measurement shall be taken under existing and proposed site conditions.

(3) **Mandatory Meeting.** Unless waived by the department, a meeting between ODOT staff and the applicant is required for a change of use application prior to the department deeming the application complete. It is preferable that the meeting be held prior to submittal of the change of use application.

(4) **Determinations of Change of Use.** The department shall determine whether a change of use meets the thresholds in section (2) of this rule by using one or more of the following methods:

(a) Field counts;

(b) Site observation;

(c) Traffic impact analysis;

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- (d) Field measurement;
- (e) Crash history;
- (f) Trip Generation, 9th Edition published by the Institute of Transportation Engineers (ITE); or
- (g) Information and studies provided by the local jurisdiction or the applicant.

(5) Exempt from Application for Change of Use. Buildout of an approved site plan or multi-phased development does not require a new application for an approach road permit where the department determines that the buildout is consistent with the land use approval by the local government and the permit issued by the department for development.

(6) Approval Criteria. The department shall approve an application for a state highway approach that does not pose a safety or highway operations concern, as set forth in OAR 734-051-4020(3), or all such concerns are sufficiently mitigated pursuant to OAR 734-051-3070, and:

(a) The application meets the applicable approach road spacing, channelization and sight distance standards set forth in OAR 734-051-4020(2)(a) through (c); or

(b) The department and the applicant reach agreement that the application moves in the direction of conforming to approach road spacing, channelization, and sight distance standards under sections (7) through (9) of this rule; or

(c) The applicant and the department reach agreement under section (6)(b) that the existing condition without change is sufficient to support approval of an application.

(7) Moving in the Direction of Conformity Collaborative Process. The department and applicant, through a collaborative process, shall determine whether an application moves in the direction of conforming to the spacing, channelization or sight distance standards subject to safety and operations concerns. The collaborative process shall be made available to the applicant within thirty (30) days of the date an application for state highway approach is deemed complete.

(8) Criteria for Moving in the Direction of Conformity. In determining whether an application for a private approach to a state highway moves in the direction of conformity with the spacing, channelization and sight distance standards of OAR 734-051-4020, the department shall consider all connections on the subject site. An application moves in the direction of conformity with 734-051-4020 when changes are made to a connection that include, but are not limited to, one or more of the following:

(a) Eliminating or combining existing connections to the highway resulting in a net reduction in the number of connections; or

(b) Improving the distance between connections; or

(c) Improving sight distance; or

(d) Widening an existing connection to accommodate truck turning radius requirements; or

(e) Widening an existing connection to accommodate additional exit lanes; or

(f) Narrowing an existing connection to provide the appropriate number of entry and exit lanes as required for the property; or

(g) Developing a throat on a connection to allow for more efficient movement of motorists from the highway.

(9) Agreement. Where the department and applicant agree that a change of use application moves in the direction of conforming to spacing, channelization, and sight distance standards, the department shall approve the application without requiring separate deviations from those standards. The department, upon completion of the terms of agreement, shall issue a Permit to Operate for all approaches that are to remain operational as identified in the agreement. An agreement to remove, modify, or mitigate a connection pursuant to the agreement between the department and the applicant is not an appealable decision.

(10) Where Agreement is Not Reached.

(a) If, after participating in a collaborative process pursuant to section (7) of this rule, the applicant and the department cannot agree that an application is moving in the direction of conformity pursuant to sections (8) and (9) of this rule, the region manager shall document the issues of agreement and non-agreement with the applicant through a written statement of non-agreement. The applicant may then request further collaboration on the issues of non-agreement under OAR 734-051-3090, sections (1) through (3), and/or a review by the Dispute Review Board under 734-051-3100.

(b) Where agreement cannot be reached under the processes of subsection (a) of this section, the department may require additional information to complete the application and make a decision pursuant to the standards of OAR 734-051-4020 and issue a final decision to approve, deny, or approve with mitigation, consistent with the procedures in OAR 734-051-3030 and 3040. The department's decision to deny or approve with mitiga-

tion applications under the standards of OAR 734-051-4020 are subject to post-decision review under OAR 734-051-3080.

(11) Connections Not Subject to Moving in the Direction of Conformity Criteria. Notwithstanding sections (6) through (8) above, the "moving in the direction of" criteria as set forth in section (8) of this rule shall not be applied to the connections in subsections (a) through (f), below. For these connections, the department shall apply the standards of OAR 734-051-4020 to approve, deny, or approve with mitigation the application, consistent with the procedures in OAR 734-051-3040.

(a) Connections where no right of access to the property exists at the location of the connection, and an application for a grant of access or indenture of access is not approved;

(b) Connections to undeveloped property without an approved site plan or land use approval allowing for development of the property;

(c) Connections for which the department rebuts a presumption of written permission under OAR 734-051-3015;

(d) Connections to property abutting a highway segment with a statewide classification and a posted speed of 50 miles per hour or greater;

(e) Connections to property abutting a highway segment designated as an expressway; and

(f) Connections to property within the boundaries of an adopted facility plan, or corridor plan, where the connection is inconsistent with the plan, and the planned component for the access to the property has been constructed or is funded to be constructed within four years at the time of the application.

Stat. Auth.: ORS 184.616, 184.619, 374.310-374.314, 374.345 & 374.355

Stats. Implemented: ORS 374.300-374.360, §27, ch. 330, OL 2011

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 7-2012(Temp), f. & cert. ef. 5-3-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12; HWD 2-2014, f. 6-25-14, cert. ef. 6-30-14; HWD 7-2014, f. & cert. ef. 7-9-14

## 734-051-3040

### Private Approach Permit Application Review, Approvals and Timelines

(1) Complete Application Required. The department shall not process an application for state highway approach that is incomplete or contains insufficient information for the department to find that it meets the submittal requirements of OAR 734-051-3030.

(2) Notice of Completeness Determination. Upon receiving an application for state highway approach, the department shall determine and provide written notification about whether the application is complete within thirty (30) days of its receipt of the application. Where the department determines that an application for state highway approach is not complete, (a) through (e) apply:

(a) The 120-day timeline under OAR 734-051-3040(4) does not begin until the application is deemed complete as defined in OAR 734-051-1070(18);

(b) The department shall notify the applicant in writing when an application is incomplete within the timeframes required by this rule;

(c) The department notice shall provide specific information on what is needed to make the application complete;

(d) The department notice shall indicate that the application must be made complete within sixty (60) days of the date of the department notice, at which time the application expires unless the department and applicant agree to an extension; and

(e) Where an application is deemed incomplete because no right of access exists at the proposed approach location, the department notice shall provide information on how to apply for a grant of access or an indenture of access, as applicable.

(3) On-Site Reviews. The department in reviewing an application for completeness may conduct an on-site review to determine the need for supplemental documentation in accordance with (a) through (c) as follows:

(a) The on-site review area includes both sides of the highway in the vicinity of the proposed approach, including the site frontage, existing connections, and public intersections;

(b) The department may notify the applicant of an on-site review to be conducted, and may invite the applicant to meet on-site to answer questions and discuss the review; and

(c) Any on-site meeting between department representatives and the applicant shall be limited to clarifying the applicant's proposal and identifying any supplemental documentation needed to meet application requirements.

(4) Decision Timeline and Final Decision Within 120-Days of Complete Application. Except as provided in section (7), the department shall make its final decision, including resolution of all internal appeals, to grant or deny an approach permit within one hundred twenty (120) days of

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the date the department deems an application for state highway approach complete. The 120-day timeline breaks down as follows:

(a) The department shall make its decision to approve, approve with mitigation, or deny an application within thirty (30) days of the date that the department determines the application to be complete, where the proposal meets the applicable spacing, channelization and sight distance standards of OAR 734-051-4020; or

(b) The department shall make its decision to approve, approve with mitigation, or deny an application within sixty (60) days of the date that the department determines the application to be complete for all other applications.

(c) The final sixty (60) days of the one hundred twenty (120) days are reserved for the contested case hearing procedures of OAR 734-051-3110, except where the timeline is extended pursuant to section (7) of this rule.

(5) General Directives Applicable to Approach Permit Decisions. The directives in (a) through (e), as follows, apply to the department's review of all applications for state highway approach:

(a) Except for highways classified as interstate highways and highways designated as expressways by the commission, and except as provided by subsection (b) of this section, the department may not use the presence of alternate access to a property abutting a highway as a basis for denying an application for state highway approach.

(b) In rural areas, the department shall consider the presence of alternate access in determining whether to approve or deny a second or subsequent application for state highway approach.

(c) Mobility standards, established by the department, are not applicable to turning movements from private approaches during the department's review of an approach permit application, except when the ratio of volume to capacity on the proposed private approach is (one-point-zero) 1.0 or greater.

(d) The department shall utilize a professional engineer with relevant experience to review and respond to evidence from a qualified expert that is submitted by the applicant.

(e) The city or county, and persons that own property adjacent to the proposed approach, shall be allowed to express concerns about the application prior to the issuance of the permit.

(f) Where the development includes multiple parcels, the development is evaluated in its entirety, regardless of the number of individual parcels or ownership contained within the development, and applications will not be processed for individual parcels or ownership.

(6) Notice of Pending Denial or Approval with Mitigation. When the department proposes to deny an approach or approve an approach with mitigation, it shall notify the applicant of its intent and offer the applicant a pre-decision collaborative process, pursuant to OAR 734-051-3060, to discuss the department's and the applicant's positions. Upon conclusion of this collaborative process or if the applicant declines the offer of this collaborative process, the department shall issue its decision in writing, including sufficient specificity regarding the access management standards and/or safety or operations concerns upon which the department's decision is based.

(7) Extension of Timelines. The timelines of division 51 may be extended pursuant to (a) through (c) below:

(a) Submittal of an application for a grant of access or application for an indenture of access suspends the 30 or 60-day timeline identified in subsection (4)(a) or (4)(b) of this rule.

(b) Submittal of a written request for the post-decision collaborative discussion under OAR 734-051-3090 or dispute review board review under 734-051-3100 suspends the 120-day timeline in section (4) of this rule.

(c) The timelines in division 51 may be extended where the applicant and the department agree to an extension in writing before the applicable deadline, as specified in these rules. Any agreement to extend a timeline shall include a new deadline date and shall state the reason for the extension. Applications for which an extension of time has been issued will expire on the deadline date specified in the extension letter if no new extension has been agreed to and the activities for which the deadline was extended have not been completed.

(8) Pending Land Use Approvals. If a land use action is pending, including an appeal of a final land use decision or a limited land use decision, for a property for which an application has been submitted, the application may be processed and:

(a) Approval will be conditioned on the department receiving notice of approval of the land use action shown on the application; and

(b) The department may issue a construction permit while the local land use action is pending. A deposit may be required, to be determined in

the manner used for a temporary approach in OAR 734-051-4040 to ensure that the approach will be removed if the land use is not approved; and

(c) The department shall not issue a Permit to Operate until the applicant provides the department with written proof of final land use decision.

(9) Notice of Decision and Findings. The department shall document with written findings the decision to approve, approve with mitigation or deny an approach, and shall provide written notice of its final decision to the applicant as follows:

(a) The notice shall describe the applicant's appeal rights, as set forth in OAR 734-051-3080 through 734-051-3110; and

(b) Written findings shall be provided to the applicant upon request.

(10) Form of the Record. The record shall include the following, as applicable:

(a) Completed application pursuant to OAR 734-051-3030(3);

(b) Documents or other information received or considered;

(c) Written stipulations;

(d) Meeting notes; and

(e) Findings and final decision.

(11) Appeals. An appeal of a department decision to approve with mitigation or deny an application for an approach permit can be made pursuant to OAR 734-051-3080 through 734-051-3110.

(12) Expired Applications. Except as provided by OAR 734-051-3040(7), an application for an approach shall expire after one hundred twenty (120) days of inactivity on the part of the applicant if the department sends a reminder letter to notify the applicant that ninety (90) days have passed with no activity, and advising that the application will expire in thirty (30) days if the application continues to be inactive. After an application for state highway approach has expired, a new application is required.

Stat. Auth.: ORS 184.616, 184.619, 374.310-374.314, 374.345 & 374.355

Stats. Implemented: ORS 374.300-374.360, §27, ch. 330, OL 2011

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12; HWD 2-2014, f. 6-25-14, cert. ef. 6-30-14; HWD 7-2014, f. & cert. ef. 7-9-14

## 734-051-3050

### Deviations from Approach Spacing, Sight Distance, and Channelization Standards for a Private Approach

(1) Purpose. The purpose of this rule is to establish criteria for the region access management engineer to approve; approve with mitigation; or deny requests for deviations from the standards set forth in OAR 734-051-4020.

(2) Requests for a Deviation. The applicant may request one or more deviations for an approach that does not meet spacing, sight distance, or channelization standards set forth in OAR 734-051-4020(2). Applications that request deviations:

(a) Must identify all deviations needed and any dependency or relationship that they have with one another; and

(b) Must include a traffic impact analysis prepared by a professional engineer as set forth in OAR 734-051-3030(4) and 734-051-3030(5), unless waived by the department.

(3) Mitigation. The department may require mitigation measures as set forth in OAR 734-051-3070 as a condition of approval of a deviation under this rule.

(4) Request for a Deviation Not Required. A request for a deviation from approach spacing, sight distance and channelization standards is not required if:

(a) The application is for property with no means of vehicular access other than the proposed approach, and the department and the applicant agree on a location for the approach and mitigation, if any, of the approach that optimizes safety, highway operations, and site design; or

(b) The permit action is triggered by a change of use and the department and the applicant agree that the proposed approach moves in the direction of conformance with the standards as set forth in OAR 734-051-3020.

(5) Approval of Requests for Deviations from Approach Spacing Standards. The region access management engineer may approve a request for a deviation from access spacing standards set forth in OAR 734-051-4020(8) and 734-051-4020(9) upon determining that the approach adequately addresses the safety and highway operations concerns set forth in section 734-051-4020(3) and one or more of the conditions in (a) through (h) apply:

(a) The applicant agrees to provide a joint approach that serves two or more properties and results in a net reduction of connections to the highway;

(b) The applicant agrees to remove or combine connection(s) to the highway resulting in a net reduction of connections;

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(c) Adherence to approach spacing standards will cause the approach to conflict with a significant natural or historic feature including but not limited to trees and unique vegetation, a bridge, waterway, park, archaeological area, or cemetery;

(d) The highway segment functions as a local interest road as defined in the Oregon Highway Plan;

(e) On a couplet with directional traffic separated by a city block or more, the request is for an approach at mid-block with no other existing approaches in the block or the proposal consolidates existing vehicle accesses at mid-block;

(f) Based on the region access management engineer's determination that one or more of the safety and operations factors in OAR 734-051-4020(3) is significantly improved as a result of the approach;

(g) The region access management engineer and the applicant agree on an approach location and mitigation measures that optimize safety, highway operations and site design; and/or

(h) The applicant demonstrates that existing development patterns or land holdings make joint use approaches impractical.

(6) Approval of Requests for Deviations from Approach Spacing Standards in Interchange Areas.

(a) The region access management engineer shall use traffic volumes based on a 20-year planning horizon in evaluating applications for deviations from the approach spacing standards for approaches proposed within an interchange management area. The 20-year year planning horizon will be measured from the date of application.

(b) The region access management engineer may approve a request for a deviation from spacing standards in an interchange area upon determining that the approach adequately addresses the safety and highway operations factors set forth in section OAR 734-051-4020(3) and one or more of the conditions in (A) through (D) apply:

(A) A condition of approval, included in the Permit to Operate, is removal of the approach when alternate access becomes available;

(B) The approach is consistent with a facility plan in the area of an interchange that has been adopted by the commission as set forth in OAR 734-051-7010;

(C) The applicant provides a joint approach that serves two or more properties and results in a net reduction of approaches to the highway; or

(D) Connections are combined or eliminated resulting in a net reduction of connections to the state highway.

(7) Approval of Requests for Deviations from Channelization Standards. The department may approve a deviation from channelization standards, pursuant to subsections (a) through (c) below:

(a) The region access management engineer may approve a deviation to the channelization standards set forth in OAR 734-051-4020(2) upon determining that the deviation adequately addresses highway safety and operations concerns set forth in section OAR 734-051-4020(3) and the conditions in (A) or (B) apply:

(A) The region access management engineer determines that channelization is not necessary to approve the application;

(B) The applicant agrees to restrict turning movements that cause the need for channelization in a manner satisfactory to the region access management engineer.

(b) If existing development patterns, land holdings, highway configuration or other factors make it impractical to meet channelization standards, the region access management engineer may require turning movements to be restricted at the approach.

(c) The department may require submittal of channelization design drawings prepared and sealed by a professional engineer for approval of a deviation for channelization.

(8) Approval of Requests for Deviations from Sight Distance Standards. The department may approve a deviation from sight distance standards, pursuant to subsections (a) or (b) below:

(a) The region access management engineer may approve a request for a deviation from sight distance standards set forth in OAR 734-051-4020(2) based on consideration of relevant factors, including but not limited to:

(A) Highway design speed, posted speed, and eighty-fifth (85th) percentile speed;

(B) Probable line of sight for the proposed approach;

(C) Anticipated traffic volumes at the proposed approach;

(D) Guidelines for intersection sight distance and stopping sight distance in the 2011 AASHTO Policy on Geometric Design of Highways and Streets; and

(E) Potential mitigation that would improve sight distance.

(b) Where a speed study prepared by the applicant and accepted by the department determines that the eighty-fifth (85th) percentile speed is lower than the current posted speed, the department may approve a deviation from the sight distance standard based upon the lower speed determination.

(9) Denial of Requests for Deviations. The region access management engineer shall not approve a request for a deviation from approach spacing, channelization or sight distance standards when any of the conditions in (a) through (d) apply:

(a) The requirements for approval under sections (5) through (8) of this rule, as applicable, cannot be met; or

(b) The standards can be met even though adherence to the standards results in higher site development costs; or

(c) The deviation creates a significant safety or traffic operations problem that cannot be mitigated by the applicant; or

(d) The request for a deviation results from a self-created hardship including but not limited to:

(A) Conditions created by the proposed site plan, building footprint or location, on-site parking, or circulation; or

(B) Conditions created by lease agreements or other voluntary legal obligations.

(10) Region Manager Approval of Deviations. The region manager, not a designee, may approve a request for a deviation from approach spacing, channelization or sight distance standards when the region access management engineer is prohibited from doing so under section (9) and:

(a) A determination is made by a professional engineer as defined in OAR 734-051-1070 and assigned by the region manager to analyze the request for a deviation determines that the approach adequately addresses the safety and highway operations concerns, or those concerns can be adequately mitigated; and

(b) The region manager, after consulting with the highway division administrator, identifies and documents conditions or circumstances unique to the site or the area that support the development.

Stat. Auth.: ORS 184.616, 184.619, 374.310-374.314, 374.345 & 374.355

Stats. Implemented: ORS 374.300-374.360, §27, ch. 330, OL 2011

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12; HWD 2-2014, f. 6-25-14, cert. ef. 6-30-14; HWD 7-2014, f. & cert. ef. 7-9-14

## 734-051-3060

### Pre-Decision Collaborative Discussion for Highway Approach Permit Applications

(1) Offer of Pre-Decision Collaborative Discussion. When the department intends to deny an application or approve an application with mitigation, it shall notify the applicant of its intent and offer to meet with the applicant in a pre-decision collaborative process, as described in sections (2) through (6), below.

(2) Notice. The department notice in section (1) shall describe the basis of the preliminary decision, extend an offer to meet with the applicant to provide further explanation or clarification of the department's preliminary decision, and provide the applicant an opportunity to propose modifications.

(3) Goals of Pre-Decision Collaborative Discussion. The goals of the pre-decision collaborative process are to ensure that all relevant information has been fully considered, provide opportunity to resolve differences to the extent possible, and facilitate timely issuance of a final decision.

(4) Timeline. The department's notice of preliminary decision and offer of a collaborative process must occur within either the 30-day or 60-day application decision timeline under OAR 734-051-3040(4), whichever is applicable. The department and applicant may agree to extend the timelines for the department's final decision as part of the collaborative process.

(5) Written Decision. Agreements reached using a pre-decision collaborative discussion shall be incorporated into the department's permit decision.

(6) Applicant May Decline Offer. If the applicant declines the offer of a collaborative process, or a collaborative agreement cannot be reached, the department shall issue its final decision in writing, including findings as set forth in OAR 734-051-3040(9).

Stat. Auth.: ORS 184.616, 184.619, 374.310-374.314, 374.345 & 374.355

Stats. Implemented: ORS 374.300-374.360, §27, ch. 330, OL 2011

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12; HWD 2-2014, f. 6-25-14, cert. ef. 6-30-14; HWD 7-2014, f. & cert. ef. 7-9-14

## 734-051-3070

### Mitigation Measures

(1) Mitigation Authorized. The department may require mitigation measures to address adverse impacts associated with a proposed approach

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on the state highway or the subject property that is not prohibited by statute or division 51 rules.

(2) Cost of Mitigation. Unless otherwise set forth in division 51 rules, the cost of mitigation measures is the responsibility of the applicant, permittee, or property owner as set forth in OAR 734-051-5050.

(3) Non-Traversable Medians. The department may not impose non-traversable medians as a mitigation measure for approach permit applications unless the department first establishes that no other mitigation measures are effective or available under the circumstances.

(4) Mitigation Measures. Mitigation measures may include one or more of the following in (a) through (n) below:

- (a) Modifications to an existing connection;
- (b) Modifications of on-site parking or storage of queued vehicles;
- (c) Installation of left turn or right turn channelization or deceleration lanes;

(d) Modifications to left turn or right turn channelization or deceleration lanes;

(e) Modifications to the roadway to maintain or improve intersection sight distance;

(f) Modification or installation of traffic signals or other traffic control devices, subject to subsection OAR 734-051-3070(7);

(g) Modification of the highway;

(h) Modification or installation of curbing;

(i) Consolidation of existing approaches or provisions for joint use approaches;

(j) Restriction of turn movements for circumstances such as:

(A) The proximity of existing connections or offset of opposing connections;

(B) Approaches within an influence area of an interchange;

(C) Approaches along an expressway;

(D) The proximity of railroad grade crossings;

(E) Approaches with a crash history involving turning movements;

(F) Approaches within the functional area of an intersection.

(k) Installations of sidewalks, bicycle lanes, or transit turnouts;

(l) Development of, or improvements to, reasonable alternate access, subject to OAR 734-051-4020(6) and 734-051-4020(7);

(m) Modifications of local streets or roads along the frontage of the site; and

(n) Installation of non-traversable medians where no other mitigation measure is effective or available under the circumstances.

(5) Relationship of Mitigation to Impacts. Mitigation measures are directly related to the impacts of the particular approach on the highway and the scale of the mitigation measures will be directly proportional to those impacts, as follows:

(a) Mitigation measures located entirely within the property controlled by the applicant and/or within existing state right of way shall be preferred over all other means of mitigation;

(b) Where mitigation requires the use of property other than that which is controlled by the applicant and/or ODOT, the department will make an effort to participate in negotiations between the applicant and other affected property owners, or assist the applicant to take necessary actions. However, ODOT will not exercise its power of eminent domain to acquire property necessary for improvements to mitigate the adverse impacts associated with a private approach that is not also part of project delivery; and

(c) When cumulative effects of existing and planned development create a situation where approval of an application would require improvements that are not directly proportional to the impacts of the proposed approach, the region manager may negotiate mitigation measures to mitigate impacts as of the day of opening and defer the remaining mitigation to a future ODOT project which may require that the applicant convey any necessary right of way to ODOT prior to development of the subject approach.

(6) Access Mitigation and Access Management Proposals. An applicant may propose mitigation for an approach to be implemented by the applicant or the local jurisdiction. The department will work with the local jurisdiction and the applicant to establish mitigation measures and alternative solutions including:

(a) Changes to on-site circulation;

(b) On-site improvements; and

(c) Modifications to the local street network.

(7) Traffic Controls as Mitigation. Where mitigation measures include traffic controls:

(a) The applicant bears the cost of the controls and construction of required traffic controls within a timeframe identified by the department or

must reimburse the department for the cost of designing, constructing, or installing traffic controls; and

(b) An applicant that is a lessee must provide evidence of compliance with required traffic controls and must identify the party responsible for construction or installation of traffic controls during and after the effective period of the lease.

(8) Traffic Signal Prioritization. Traffic signals are approved in the order of priority, (a) through (c) below:

(a) Traffic signals for public approaches.

(b) Private approaches identified in a transportation system plan to become public.

(c) Private approaches.

(9) Traffic Signal Requirements. Traffic signals are approved with the following requirements:

(a) A signalized private approach must meet spacing standards for signalization relative to all planned future signalized public road intersections; and

(b) Location of traffic signals on state highways must meet the criteria of OAR 734-020-0400 through 734-020-0500.

(10) Ownership of Improvements. All highway improvements within the right of way resulting from mitigation constructed by the permittee, subject to inspection and acceptance by the department, become the property of the department. An agreement between the department and permittee may be required with mitigation. Such agreement may include, but shall not be limited to, identifying work that is allowed to occur within the right of way, specifying the responsibilities of each party, including any maintenance responsibility, and documenting the transfer of ownership from the applicant to the department for roadway improvements.

(11) Appealable Decision. Approval of an application with mitigation measures is an appealable decision.

Stat. Auth.: ORS 184.616, 184.619, 374.310-374.314, 374.345 & 374.355

Stats. Implemented: ORS 374.300-374.360, §27, ch. 330, OL 2011

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12; HWD 2-2014, f. 6-25-14, cert. ef. 6-30-14; HWD 7-2014, f. & cert. ef. 7-9-14

## 734-051-4020

### Standards and Criteria for Approval of Private Approaches

(1) Applicability. This rule describes standards and criteria that the department applies to the review of an Application for State Highway Approach that has been deemed complete as set forth in OAR 734-051-3030. Applications submitted for change of use of an approach may be reviewed under the standards and criteria set forth in OAR 734-051-3020 in lieu of this rule.

(2) General Approval Criteria. Except for applications where the department identifies safety or operations concerns set forth in section (3), and except for applications that are subject to alternate access considerations as set forth in sections (5) through (7), the Region Manager shall approve an Application for State Highway Approach that meets the general approval criteria (a)-(c) in this section. Additional criteria set forth in section (9) apply to interchange areas.

(a) Approach Spacing Standards. Section (8) of this rule sets forth the approach spacing standards, except that the spacing standards applicable to interchanges and interchange areas are set forth in section (9).

(b) Channelization Standards. An application meets the channelization standards of this rule if none of the conditions in (A) through (C), below, exist; where a condition in (A) through (C) exists, an application may meet the channelization standards if the existing or proposed lane configuration on the highway conforms to the design requirements of the ODOT Highway Design Manual in effect at the time the application is filed.

(A) Average daily trips for the existing or proposed development exceed four hundred (400) for an application on a two-lane highway with annual average daily traffic of five thousand (5,000) or more motor vehicles; or

(B) Average daily trips for the existing or proposed development exceed four hundred (400) for an application on a four-lane highway with annual average daily traffic of ten thousand (10,000) or more motor vehicles; or

(C) Average daily trips for the existing or proposed development multiplied by the annual average daily traffic on the highway is equal to or greater than the products listed in the Table 1.

(c) Sight Distance Standards. Table 2 sets forth the sight distance standards for approaches. An Application for State Highway Approach meets the sight distance standard of this rule if the intersection sight distance at the intersection of the proposed approach and highway is equal to or greater than shown in Table 2. Intersection sight distance shall never be less than

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stopping sight distance, as calculated in accordance with 2011 AASHTO Policy on Geometric Design of Highways and Streets. Sight distance must be unobstructed within the sight triangle based on the following positions of measurement:

(A) Driver's eye height equal to 3.5 feet above the road surface of the proposed approach at a location 15 feet from the edge of the travel lane; and

(B) Object height equal to 3.5 feet above the road surface at the near edge of the travel lane to the left and at the far edge of the travel lane to the right of the approach. [Table not included. See ED. NOTE.]

(3) Safety and Operations Concerns. The department has the burden of proving safety and highway operations concerns that it relies upon in requiring mitigation or in denying an application based on those concerns. The department may deny an application where the applicant is unable to provide adequate improvements to mitigate documented safety or highway operations concerns; safety and highway operations concerns that the department may consider are limited to (a) through (f), below:

(a) Regular queuing on the highway that impedes turning movements associated with the proposed approach. Regular queuing will be evaluated based on the ninety-fifth (95th) percentile queue on the highway during the highway peak hour, as determined by field observation or traffic analysis in accordance with ODOT's Analysis Procedures Manual; or

(b) Overlapping left turn movements or competing use of a center turn lane from a connection located on the opposite side of the highway; or

(c) Location of the proposed approach within a highway segment with a crash rate that is twenty (20) percent or higher than the statewide average for similar highways; or

(d) Location of the proposed approach within a highway segment listed in the top five percent of locations identified by the Safety Priority Index System developed by the department; or

(e) The proposed approach is on a district or regional highway with a posted speed of 50 miles per hour or higher and the distance to the nearest public approach is less than the stopping sight distance on the highway, calculated in accordance with the 2011 AASHTO Policy on Geometric Design of Highways and Streets; or

(f) Insufficient distance for weave movements made by vehicles exiting the proposed approach across multiple lanes in the vicinity of:

(A) Signalized intersections; or

(B) Roads classified as collectors or arterials in an acknowledged transportation system plan or comprehensive plan, or classified as such by the Federal Highway Administration; or

(C) On-ramps or off-ramps.

(4) Applications that Do Not Meet Approval Standards and Criteria — Deviations. The department may approve an application that does not meet the approval standards and criteria of this rule for approach spacing, sight distance, and/or channelization if a deviation from the standards is approved as set forth in OAR 734-051-3050.

(5) Applications for Properties with No Alternate Access. For an application for an approach to property with a right of access and no alternate access, the department may waive the standards and criteria of this rule for access spacing, sight distance and channelization if the department and the applicant agree on an approach location and mitigation measures that optimize safety, highway operations and site design. Approval of an application under this section does not require approval of a deviation. If agreement cannot be reached the department shall apply OAR 734-051-4020(2)–(4) to the application to approve, deny, or approve with mitigation the application, consistent with the procedures in 734-051-3040. In applying 734-051-4020(2)–(4), the department may include any matters of agreement or other results from discussion with the applicant pursuant to this section. The department's decision to deny or approve with mitigation applications under 734-051-4020(2)–(4) is subject to post-decision review under 734-051-3080.

(6) Applications Where the Department Shall Consider Alternate Access. The region manager shall consider alternate access to a property only for an application for an approach to a highway designated as an expressway as described in subsection (a) of this section, or for a second or subsequent approach to a property in a rural area as described in subsection (b) of this section.

(a) Expressways. The region manager may approve an application to an expressway for a property that has alternate access when the criteria in (A) through (C) below are met:

(A) The department determines that either:

(i) The alternate access to the property cannot be made reasonable based on findings under section (7) of this rule; or

(ii) The approach provides an immediate and long-term benefit to the state highway system as set forth in OAR 734-051-4030, in addition to mitigating any safety or operations concerns; and

(B) The application meets the applicable standards and criteria of this rule or a deviation is approved as set forth in OAR 734-051-3050; and

(C) The approach does not cause any of the safety or operations concerns set forth in section (3) of this rule, or those concerns can be adequately mitigated.

(b) A Second or Subsequent Approach in a Rural Area. The region manager may approve an application for a second or subsequent approach to a property in a rural area that has alternate access when the criteria in paragraphs (A) through (C) are met:

(A) The department determines that either:

(i) The alternate access to the property cannot be made reasonable based on findings under section (7) of this rule; or

(ii) The approach will serve rural infill or redevelopment and approval of the approach will result in a net reduction of connections to the highway or the net result improves safety for any remaining approaches; and

(B) The application meets the applicable standards and criteria of this rule or a deviation is approved as set forth in OAR 734-051-3050; and

(C) The approach does not cause any of the safety or operations concerns set forth in section (3) of this rule, or those concerns can be adequately mitigated.

(7) Reasonable Alternate Access Criteria. In determining whether alternate access is or can be made reasonable pursuant to section (6) of this rule, the department shall consider all of the following provisions in subsections (a) through (e) below:

(a) Authorized Uses. Alternate access to the property is adequate to allow the authorized uses for the property identified in the acknowledged local jurisdiction comprehensive plan and local land use regulations, taking into account the economic development needs of the property;

(b) Type, Number, Size and Location of Alternate Access. The type, number, size and location of alternate access are adequate to serve the volume and type of traffic reasonably anticipated to enter and exit the property, based on the planned uses for the property and taking into account the economic development needs of the property;

(c) Constraints to Alternate Access. The presence of constraints that limit the development of alternate access including:

(A) Legal restrictions;

(B) Geographic restrictions;

(C) Historical or cultural resources; and

(D) Physical considerations such as planned streets, roadway width, and weight and size restrictions;

(d) Availability of Mitigation Measures. The availability of mitigation measures set forth in OAR 734-051-3070 that the applicant could make on the property or along the roadway frontage of the property, including situations in which the applicant or the local jurisdiction commits proportional shares toward the cost of removal or mitigation of geographic, safety, or physical restrictions on the property or local street network. Neither the lack of commitment by a local government to share the cost of mitigation nor the cost of mitigation alone is conclusive in evaluating whether a vehicle access is or could be made reasonable; and

(e) Phasing. In circumstances where a significant difference exists between the existing and the planned local road network the department may consider a phased method to establishing reasonable alternative access as follows:

(A) Where a planned public street or road network cannot be provided at the time of development, an application for an approach may be approved with conditions requiring a connection to the planned local street or road network when it becomes available;

(B) The approach permit to the state highway may be revoked and the approach removed, or the approach permit may be modified and additional mitigation required when the planned street or road network becomes available; and

(C) ODOT and the local government enter into an agreement regarding the timing, cost and responsibility for the development of the planned street or road network.

(8) Access Management Spacing Standards. Tables 3 through 10 set forth the access management spacing standards. Tables 7, 8, 9, and 10, including Figures 1, 2, 3 and 4, are the spacing standards for interchanges and approaches in interchange areas. Tables 3 and 6 are the standards for unclassified highways such as service roads and frontage roads. An application meets the spacing standards set forth in Tables 3 through 10 if the spacing of a proposed approach is equal to or greater than the distance shown in the applicable table. The spacing standards in Tables 3 through 6

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are subject to the method of measurement and exceptions in subsections (a) through (c) below:

(a) The spacing standards in Tables 3 through 6 apply to the distance measured along the highway from the center of an existing or proposed private approach to the center of the nearest existing private connection, proposed approach, or public approach on the same side of the highway in both directions;

(b) The following exceptions in paragraphs (A) through (E) apply to the spacing standards in Tables 3 through 6:

(A) On one-way highways or highways with a non-traversable median, where turning movements to and from the highway are limited to either right in/right out or left in/left out turns only, the applicable approach spacing standards equal one-half the spacing standards in Tables 4 through 6.

(B) Tables 4 through 6 apply to highways designated as expressways regardless of average daily traffic.

(C) The spacing standards included in special transportation area management plans, and facility plans that are adopted by the Commission, take precedence over the spacing standards described in Tables 3 through 6.

(D) For special transportation areas where no management plan has been adopted, the minimum access management spacing for public road approaches is the existing city block spacing or the city block spacing as identified in the local comprehensive plan. Public road connections are preferred over private approaches and in special transportation areas, private approaches are discouraged; however where private approaches are allowed and where land use patterns permit, the minimum access management spacing for private approaches is 175 feet or mid-block if the current city block spacing is less than 350 feet.

(E) For a signalized private approach, the signal spacing standards in OAR 734-020-0400 through 734-020-0500 supersede the access management spacing standards in Tables 3 through 6; and

(c) The spacing standards in Tables 3 through 6 do not apply to approaches in existence prior to January 1, 2012, except when:

(A) A new approach or change of use of an approach is required under ORS 374.312;

(B) Where infill development or infill redevelopment occurs and spacing or safety will be improved by moving in the direction of the spacing standards in Tables 3 through 6; or

(C) Where a highway or interchange project occurs and spacing or safety will be improved by moving in the direction of the applicable spacing standards in Tables 3 through 6.

(9) Spacing Criteria for Applications in an Interchange Area. In addition to the spacing standards in Tables 7 through 10, the following criteria in subsections (a) and (b) below apply to approval of an application for a proposed approach located in an interchange area:

(a) The approach must be consistent with adopted facility plans; and

(b) Location of proposed traffic signals within an interchange area as illustrated in Figures 1, 2, 3 and 4 must meet the criteria of OAR 734-020-0400 through 734-020-0500.

[ED. NOTE: Tables referenced are available from the agency.] Stat. Auth.: ORS 184.616, 184.619, 374.310-374.314, 374.345 & 374.355

Stats. Implemented: ORS 374.300-374.360, §27, ch. 330, OL 2011

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12; HWD 2-2014, f. 6-25-14, cert. ef. 6-30-14; HWD 7-2014, f. & cert. ef. 7-9-14

## 734-051-5060

### Liability, Insurance and Bonding Requirements

(1) Liability. A permittee assumes responsibility for damage or injury to any person or property resulting from the construction, maintenance, repair, operation, or use of an approach for which a construction permit or a Permit to Operate is issued and where the permittee may be legally liable.

(2) Indemnification. An applicant or permittee indemnifies and holds harmless the State of Oregon, the commission, the department, and all officers, employees or agents of the department against damages, claims, demands, actions, causes of action, costs, and expenses of whatsoever nature which may be sustained by reasons of the acts, conduct, or operation of the applicant, his agents, or employees in connection with the construction, maintenance, repair, operation, or use of an approach. Any such indemnification shall also provide that neither the contractor or subcontractor, nor any attorney engaged by the contractor or subcontractor, shall defend any claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State of Oregon may, at any time at its election, assume its own defense and settlement in the event that it determines that the contractor is prohibited from defending the State of Oregon, or that

the contractor is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue or that it is in the best interests of the State of Oregon to do so. The State of Oregon reserves all rights to pursue claims it may have against the contractor if the State of Oregon elects to assume its own defense.

(3) Amount of Insurance. Construction of an approach may not begin until the applicant provides the department with evidence of insurance in the following minimum amounts or the amounts required by the Department of Administrative Services, if greater:

(a) \$500,000 for property damage resulting from any single occurrence, or \$500,000 combined single limit and annual aggregate; and

(b) \$500,000 for the death or injury of any person, subject to a limit of \$500,000 for any single occurrence and annual aggregate.

(4) Additional Insured. Insurance policies must include as Additional Insured the State of Oregon, the commission, and the department, its officers, agents and employees, except as to claims against the permittee, for personal injury to any members of the commission or the department and its officers, agents, and employees or damage to any of its or their property.

(5) Insurance Required Prior to Construction. Construction of an approach may not begin until a copy of the insurance policy or a certificate showing evidence of insurance is filed with the department.

(6) Notice of Intent to Cancel or Not Renew Insurance. A permittee shall provide thirty (30) days written notice to the department of intent to cancel or intent not to renew insurance coverage. Failure to comply with notice provisions does not affect coverage provided to the State of Oregon, the commission, or the department, its officers, agents and employees.

(7) Damages. If the permittee or permittee's contractor damages the highway surface or highway facilities, the applicant must replace or restore the highway or highway facilities to a condition satisfactory to the department.

(8) Assurances. The permittee must furnish, in an amount specified by the region manager and for the time period necessary to install the approach, a cash deposit or a bond issued by a surety company licensed to do business in the State of Oregon to ensure the approach is installed in conformance with the requirements of this division and that any damage to the highway has been corrected to the department's satisfaction; and no construction is performed until a deposit or bond is filed with the department.

Stat. Auth.: ORS 184.616, 184.619, 374.310-374.314, 374.345 & 374.355

Stats. Implemented: ORS 374.300-374.360, §27, ch. 330, OL 2011

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12; HWD 2-2014, f. 6-25-14, cert. ef. 6-30-14; HWD 7-2014, f. & cert. ef. 7-9-14

## 734-051-5120

### Access Management in Project Delivery

(1) Applicability:

(a) This rule applies to access management in the project delivery process for modernization and highway improvement projects included in the Statewide Transportation Improvement Program.

(b) For purposes of this rule, a highway improvement project is a project in the Statewide Transportation Improvement Program that proposes to modify, relocate, or remove existing public or private connections to the state highway within project limits.

(2) Department Exemptions. This rule does not create an obligation that the department apply documentation requirements in OAR 734-051-3010 through 734-051-3050 (documentation requirements that pertain to approach permit applications).

(3) Access Management Strategy

(a) The department shall develop an access management strategy during project delivery for modernization and highway improvement projects included in the Statewide Transportation Improvement Program. The access management strategy shall be developed in collaboration with cities, counties and owners of real property abutting a state highway and shall be consistent with the Oregon Transportation Plan, the Oregon Highway Plan, and other transportation modal plans adopted by Oregon Transportation Commission.

(b) An Access management strategy shall include an access management methodology that balances the economic development objectives of properties abutting the state highway with the transportation safety, access management objectives, and mobility of state highways, in a manner consistent with local transportation system plans and the land uses permitted in the local comprehensive plans acknowledged under ORS chapter 197.

(c) An Access management strategy shall identify the location and type of public and private approaches and other necessary improvements that are planned to occur primarily in the highway right of way and that are

# ADMINISTRATIVE RULES

intended to improve current conditions on the highway by moving in the direction of the objective standards described in ORS 374.311.

(4) Content of an Access Management Strategy

(a) The development of the access management methodology under section (3)(b) may include the following factors:

(A) The level of direct highway access generally needed for properties based upon the types of uses allowed by the zoning and comprehensive plan designations, such as residential, commercial retail, or other designation, recognizing that direct access may increase the economic development opportunities for some uses located on abutting properties;

(B) Effects of out of direction travel on the ability of customers to access various types of uses, recognizing differences between destination and pass-by uses;

(C) Effects of changing existing connections and circulation patterns for existing developed properties;

(D) Effects of traffic congestion or speed which could negatively affect the ability of customers to access adjacent properties safely;

(E) Community support for the highway projects and economic development proposals in the planning area, as indicated by action of the governing body of the local government;

(F) The highway classification and long term vision for the function of the highway as to the level of importance for providing mobility and movement of freight;

(G) Existing and long term safety needs of all highway users;

(H) Reducing vehicle conflict points where possible, particularly around critical intersections and interchange locations, to improve highway safety and operations consistent with the highway classification;

(I) Safety and operations concerns under OAR 734-051-4020(3);

(J) Safety planning tools, data and resources such as the department's Safety Priority Index System, Analysis Procedures Manual, Roadway Departure Plan, Bicycle/Pedestrian Safety Plan, and Highway Safety Manual predictive models that identify areas of existing and future safety concerns. When considering safety factors as part of the methodology, the safety concerns and issues must be documented by a professional engineer as defined in OAR 734-051-1070.

(b) The access management strategy shall include the locations of existing or planned intersecting county roads and city streets. The locations shall be consistent with the city and county transportation system plans or must be determined and agreed upon through collaboration among the department and the cities and counties affected by the project.

(c) The access management strategy shall identify locations where the department intends to acquire all rights of access to a segment of the state highway as part of the project.

(d) The access management strategy shall identify the locations and types of private approaches that are planned for the highway right of way. When determining the locations of private approaches, the department shall collaborate with affected real property owners, property lessees and businesses in the following manner:

(A) The department shall provide written notice to all affected real property owners and, when possible, property lessees and business operators. The department's notice will inform the parties that, based on application of the access management methodology, it may be necessary to relocate, modify, or remove one or more approaches to their property. The department notice shall invite the affected real property owners, lessees and business operators to meet with the department to review the application of the methodology to the approaches to their property.

(B) If an affected real property owner, property lessee or business operator accepts the invitation to meet with the department, then the department shall meet with the party(ies) to explore options for addressing the application of the methodology to their property.

(C) After meeting with the affected real property owner, property lessees or business operators the department shall provide written notice of the final decision regarding the location, modification or closure of the approaches to their property. The department's notice will explain the property owner's options for appeal of the department's decision, under OAR 734-051-3080 through 734-051-3110. Only an affected real property owner may appeal the department's final decision to modify, mitigate, or close an approach to their property.

(5) Public Involvement Process. The department shall provide a public involvement process for cities, counties, highway users, real property owners, property lessees, and business operators affected by a modernization or highway improvement project to assist with:

(a) Identifying deficiencies of highway segments impacted by the project;

(b) Establishing the long-term vision for the highway segments that are part of the project to guide the scope and design of improvements for the project;

(c) Establishing the access management methodology by which private connections will be considered for modification, relocation or closure; and

(d) Establishing locations where the department proposes to acquire all rights of access to a segment of the state highway as part of the project.

(6) Request for Review of the Access Management Methodology

(a) The department shall provide written notice to all affected real property owners at least twenty-one (21) calendar days prior to taking action to finalize the access management methodology for a highway project.

(b) Affected real property owners may make a written request for a review of the access management methodology prior to the department finalizing it, through either of the following:

(A) A collaborative discussion under section (7) of this rule; or

(B) An Access Management Dispute Review Board under section (8) of this rule.

(c) Affected real property owners may request a review of the Access Management Methodology not later than twenty-one (21) calendar days following the date of the department notice under (a) of this section. Only an affected real property owner may request a review of the Methodology. The request for review must be made in writing and state whether the request is for a review through a collaborative discussion under Section (7) or an Access Management Dispute Review Board under Section (8).

(d) An affected real property owner who requests a review of an access management methodology by collaborative discussion may also request a review by an Access Management Dispute Review Board after completion of the collaborative discussion. The request for review by an Access Management Dispute Review Board must be made not later than twenty-one (21) calendar days after the date of the final decision issued by the region manager following the completion of the collaborative discussion under section (7) of this rule.

(7) Collaborative Discussion Process

(a) If an affected real property owner requests a collaborative discussion to review the access management methodology, the collaborative discussion shall be conducted within forty five (45) calendar days from the date of written request from the affected real property owner(s), unless the department and affected real property owner(s) agree to a time extension in writing.

(b) The region manager may include any department staff that he or she finds appropriate or necessary in the collaborative discussion process. In addition, the region manager shall invite local government representatives, and may include other facility users, economic development representatives or other parties which the region manager believes will contribute to finding appropriate solutions. The collaborative discussion shall be conducted under the alternative dispute resolution model in ORS 183.502, unless a different process is agreed upon by the department and the affected real property owner(s).

(c) The region manager shall consider the information presented as part of the collaborative discussion and make the final decision. Within twenty-one (21) calendar days following the completion of the collaborative discussion, the region manager shall notify the property owner(s) in writing of the final decision to:

(A) Modify the access management methodology; or

(B) Finalize the access management methodology without modifications.

(8) Access Management Dispute Review Board Process

(a) The actions and recommendations of the Access Management Dispute Review Board are not land use decisions, as defined in ORS 197.015, and may not be appealed to the Land Use Board of Appeals.

(b) Where more than one affected real property owner with the same or similar concerns requests review of the access management methodology by an Access Management Dispute Review Board, the department may consolidate the reviews.

(c) The Access Management Dispute Review Board shall include the following:

(A) The director, or a designee of the director, who is familiar with the location of the project;

(B) A representative of the local jurisdiction for which the state highway is located;

(C) An independent professional engineer with education or experience in traffic engineering as defined in OAR 820-040-0030; and

(D) A representative from the economic or business sector.

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(d) The Access Management Dispute Review Board shall be conducted not later than forty-five (45) calendar days from the date of written request from the affected real property owner(s), unless the department and affected real property owner(s) agree to a time extension in writing. The Access Management Dispute Review Board shall make its recommendation to the director not later than fourteen (14) calendar days following the conclusion of its deliberations.

(9) Director Decisions Based on the Recommendations of the Access Management Dispute Review Board

(a) The director shall consider the recommendations of the Access Management Dispute Review Board and make the final decision. The director shall notify in writing all parties participating in the review of the final decision to either:

(A) Modify the access management methodology; or

(B) Finalize the access management methodology without modifications.

(b) The director's decision under Section (1) of this rule shall be issued not later than twenty-one (21) calendar days after receiving the recommendation of the Access Management Dispute Review Board.

Stat. Auth.: ORS 374.310 - 374.314, 374.345, 374.355, 374.360

Stats. Implemented: ORS 374.300 - 374.360, §27, Ch. 330, OL 2011, Ch. 476, OL 2013

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12; HWD 2-2014, f. 6-25-14, cert. ef. 6-30-14; HWD 7-2014, f. & cert. ef. 7-9-14

## 734-051-7010

### Access Management in Highway Facility Plans

(1) General Provisions.

(a) Highway facility plans must be consistent with the Oregon Transportation Plan, the Oregon Highway Plan, and other transportation modal plans adopted by Oregon Transportation Commission. Where a proposed highway facility plan is inconsistent with adopted plans, the proposed highway facility plan must be amended to be made consistent or the adopted plans must be amended to be consistent with the proposed highway facility plan.

(b) Highway facility plans must include the location of county roads and city streets within the area described in the facility plan. The location of future city or county road connections or changes to existing city or county connections must be determined through collaborative discussion and agreement between the department and the affected cities and counties.

(2) Public Participation in the Development of Highway Facility Plans.

(a) The department shall provide for a public involvement process when it develops highway facility plans. The department shall provide notice to affected real property owners and, where possible, include property lessees and business operators that abut the state highway(s), local governments, stakeholders representing the freight industry and economic development, and others who have expressed interest in participating in the planning process in writing or by email. The department's notification shall describe the general planning process, identify opportunities for stakeholder participation, and include the name and contact information of the department project leader and links to obtain updates.

(b) The public participation process shall include an opportunity for affected real property owners that abut the highway to review the key principles and related methodology developed under sections (3) and (4) of this rule.

(3) Development of Key Principles for Access to Properties Abutting the Highway.

(a) Highway facility plans that identify a need to modify, relocate, or close one or more existing private approaches must include key principles in the plan to address how properties abutting a state highway will be evaluated to retain or obtain access to the state highway during and after plan implementation. These key principles will support the overall facility plan goals and objectives but will be more specifically focused on the economic development importance of highway access to abutting properties, while also recognizing the need to ensure transportation infrastructure improvement benefits are maintained throughout the life of the facility plan.

(b) The key principles must balance the economic development objectives of real properties abutting the state highway with the transportation safety, access management objectives, and mobility of the state highway in a manner consistent with state transportation plans, local transportation system plans, and the land uses permitted in the local comprehensive plans acknowledged under ORS Chapter 197.

(c) The highway facility plan shall articulate the key principles in sufficient detail and include an anticipated timeline for plan implementation. The key principles and timelines will inform affected real property owners who abut the highway(s) of the potential for modification, relocation or clo-

sure of existing private connections within the area described in the facility plan.

(4) Development of a Methodology for Facility Plans. The methodology developed by the department under this section for facility plans, including those prepared for specific highway improvement projects, will be an assessment that applies the key principles developed under section (3) to the planning process as it relates to access decisions. The facility plan and related methodology must be consistent with the agreed upon local road connections identified in the Transportation System Plan or with the local road connections agreed upon during development of the plan and must consider potential implications to both the state and local roadway networks and transportation systems. The methodology may include the following factors in development and application of the assessment:

(a) How properties abutting state highways within the facility plan area could develop or redevelop consistent with the existing zoning and comprehensive plan designations;

(b) The level of direct highway access generally needed for properties based upon types of uses allowed by the zoning and comprehensive plan designations, such as residential, commercial retail, or other designation; recognizing that direct access may increase the economic development opportunities for some uses located on abutting properties;

(c) Effects of out of direction travel on the ability of customers to access various types of uses, recognizing differences between destination and pass-by uses;

(d) Effects of changing existing connections and circulation patterns for existing developed properties;

(e) The safety and operational implications of traffic congestion or speed which could negatively affect the ability of customers to access adjacent properties safely;

(f) Creation of permanent jobs in the planning area in relation to the economy and population, including jobs in employment and industrial areas;

(g) Community support for the highway projects and economic development proposals in the planning area, as indicated by action of the governing body of the local government;

(h) The agreed upon long term vision for the function of the highway as to its level of importance for providing mobility and movement of freight;

(i) Existing and long term safety needs of all highway users;

(j) Reducing vehicle conflict points where possible, particularly around critical intersections and interchange locations, to improve highway safety and operations consistent with the highway classification;

(k) Safety and operations concerns under OAR 734-051-4020(3);

(l) Safety planning tools, data and resources such as the department's Safety Priority Index System, Analysis Procedures Manual, Roadway Departure Plan, Bicycle/Pedestrian Safety Plan, and Highway Safety Manual predictive models that identify areas of existing and future safety concerns. When considering safety factors as part of the methodology, the safety concerns and issues must be documented by a professional engineer as defined in OAR 734-051-1070.

(5) Notice and Review of Key Principles for Affected Real Property Owners.

(a) The department shall provide written notice to all affected real property owners, and where possible include property lessee's and business operators, at least twenty (20) days prior to the approval by the department and local agency(s) of the key principles for a highway facility plan.

(b) Affected real property owners may make a written request for a review of the key principles and related methodology for the facility plan through either of the following:

(A) A Collaborative Discussion under section (8) of this rule; or

(B) An Access Management Dispute Review Board under section (9) of this rule.

(c) Affected real property owners may request a review any time following the date of the department notice in subsection (a), up to the time of plan adoption or finalization. The request for review must be made in writing and state whether the request is for review through a collaborative discussion or an Access Management Dispute Review Board.

(d) An affected real property owner who requests a review of the key principles and related methodology through collaborative discussion may also request a review by an Access Management Dispute Review Board after completion of the collaborative discussion. The request for review by an Access Management Dispute Review Board must be made not later than twenty-one (21) calendar days after the date of the final decision issued by the region manager under section (8) of this rule.

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(6) Approval of Key Principles. The department shall approve the key principles by written signature and date of the director or region manager no sooner than 20 days after the date of the department notice in section 5(a) of this rule with written concurrence by the local agency.

(7) Commission Adoption and Department Finalization of Highway Facility Plans.

(a) Highway facility plans that amend provisions of the Oregon Highway Plan shall be adopted by the Commission consistent with the provisions of OAR 731-015-0065. Prior to adoption by the Commission, the department shall work with local governments to amend local comprehensive plans, transportation system plans and local land use regulations to ensure consistency of the facility plan with local plans and regulations. A decision to adopt a highway facility plan is a land use decision that can be appealed to the Land Use Board of Appeals.

(b) Highway facility plans will be finalized by the department by a written signature and date of the director or region manager.

(8) Collaborative Discussion Process.

(a) If an affected real property owner requests review of the key principles or related methodology by a collaborative discussion, the collaborative discussion shall be within forty five (45) days from the date of written request from the affected real property owner, unless the department and affected real property owner agree to an extension of time.

(b) The region manager may include any department staff that he or she finds appropriate or necessary in the collaborative discussion process. In addition, the region manager shall invite appropriate local government representatives, and may include other facility users, economic development representatives or other parties which the region manager believes will contribute to finding appropriate solutions. The collaborative discussion shall be conducted under the alternative dispute resolution model in ORS 183.502, unless a different process is agreed upon by the department and the affected real property owner(s).

(c) The region manager shall consider the information presented as part of the collaborative discussion and make the final decision. Within twenty-one (21) calendar days following the completion of the collaborative discussion, the region manager shall notify the participants in the collaborative discussion in writing of the final decision to:

(A) Modify the key principles or related methodology; or

(B) Validate the key principles or related methodology without modifications. If the key principles were not previously approved as specified under section 6(a) of this rule, the department and local agency(ies) will approve the key principles, unless a request for review from the Access Management Dispute Review Board is received by the agency.

(9) Access Management Dispute Review Board Process.

(a) The actions and recommendations of the Access Management Dispute Review Board are not land use decisions, as defined in ORS 197.015, and may not be appealed to the Land Use Board of Appeals.

(b) An affected real property owner who requests a review by the Access Management Dispute Review Board may not request a review by collaborative discussion under section (8) of this rule.

(c) Where an affected real property owner requests review of the key principles or related methodology by the Access Management Dispute Review Board, the department will provide notice to all affected property owners inviting them to participate in the Access Management Dispute Review Board process. Only one Access Management Dispute Review Board process is allowed to be used for each facility plan.

(d) The Access Management Dispute Review Board shall include the following:

(A) The director or a designee of the director who is familiar with the location for which the facility plan is being prepared;

(B) A representative of the local jurisdiction in which the state highway is located;

(C) An independent professional engineer with education or experience in traffic engineering as defined in OAR 820-040-0030; and

(D) A representative from the economic or business sector.

(e) The Access Management Dispute Review Board shall be conducted within forty-five (45) days from the date of written request from the affected real property owner(s), unless the department and affected real property owner(s) agree to an extension of time in writing.

(f) The Access Management Dispute Review Board shall make its recommendation to the director not later than fourteen (14) calendar days following the conclusion of its deliberations.

(g) The director shall consider the recommendations of the Access Management Dispute Review Board and make the final decision. The director shall notify in writing all parties participating in the review of the final decision to either:

(A) Modify the key principles or related methodology; or

(B) Validate the key principles or related methodology without modifications. If the key principles were not previously approved as specified under section 6(a) of this rule, the department and local agency(ies) will approve the key principles.

(h) The director's decision under subsection (g) shall be issued not later than twenty-one (21) calendar days after receiving the recommendation of the Access Management Dispute Review Board under subsection (f).

Stat. Auth.: ORS 184.616, 184.619, 374.310-374.314, 374.345 & 374.355

Stats. Implemented: ORS 374.300-374.360, §27, ch. 330, OL 2011

Hist.: HWD 16-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 6-29-12; HWD 8-2012, f. 6-27-12, cert. ef. 6-29-12; HWD 2-2014, f. 6-25-14, cert. ef. 6-30-14; HWD 7-2014, f. & cert. ef. 7-9-14

## 734-051-8010

### Notice and Review of Key Principles and Related Methodology for Facility Plans for Affected Real Property Owners

(1) The Department shall provide written notice to all affected real property owners at least twenty (20) calendar days prior to the taking action to approve the key principles and related methodology for a highway facility plan.

(2) Affected real property owners may make a written request for a review of the key principles and related methodology for the Facility Plan through either of the following:

(a) A Collaborative Discussion under 734-051-8020; or

(b) An Access Management Dispute Review Board under 734-051-8025.

(3) Affected real property owners must request a review not later than twenty (20) calendar days following the date of the Department notice under Section (1) of this rule. The request for review must be made in writing and state whether the request is for review through a Collaborative Discussion or an Access Management Dispute Review Board.

(4) An affected real property owner who requests a review of the key principles and related methodology through Collaborative Discussion may also request a review by an Access Management Dispute Review Board after completion of the Collaborative Discussion. The request for review by an Access Management Dispute Review Board must be made not later than twenty-one (21) calendar days after the date of the final decision issued by the Region Manager following the Collaborative Discussion under 734-051-8020.

Stat. Auth.: ORS 374.310-374.314, 374.345, 374.355, 374.360

Stats. Implemented: ORS 374.300 to 374.360, §27, ch. 330, OL 2011, ch. 476, OL 2013

Hist.: HWD 7-2013(Temp), f. 12-23-13, cert. ef. 1-1-14 thru 6-30-14; Temporary suspended by HWD 2-2014, f. 6-25-14, cert. ef. 6-30-14; Temporary suspended by HWD 7-2014, f. & cert. ef. 7-9-14

## 734-051-8015

### Notice and Review of the Access Management Methodology for a Highway Project

(1) The Department shall provide written notice to all affected real property owners at least twenty-one (21) calendar days prior to taking action to finalize the Access Management Methodology for a highway project.

(2) Affected real property owners may make a written request for a review of the Access Management Methodology prior to the department finalizing the Methodology, through either of the following:

(a) A Collaborative Discussion under 734-051-8020; or

(b) An Access Management Dispute Review Board under 734-051-8025.

(3) Affected real property owners must request a review of the Methodology not later than twenty-one (21) calendar days following the date of the Department notice under Section (1) of this rule. The request for review of the Methodology must be made in writing and state whether the request is for a review through Collaborative Discussion or an Access Management Dispute Review Board.

(4) An affected real property owner who requests a review of an Access Management Methodology through Collaborative Discussion may also request a review by an Access Management Dispute Review Board after completion of the Collaborative Discussion. The request for review by an Access Management Dispute Review Board must be made not later than twenty-one (21) calendar days after the date of the final decision issued by the Region Manager following the Collaborative Discussion under 734-051-8020.

Stat. Auth.: ORS 374.310-374.314, 374.345, 374.355, 374.360

Stats. Implemented: ORS 374.300 to 374.360, §27, ch. 330, OL 2011, ch. 476, OL 2013

Hist.: HWD 7-2013(Temp), f. 12-23-13, cert. ef. 1-1-14 thru 6-30-14; Temporary suspended by HWD 2-2014, f. 6-25-14, cert. ef. 6-30-14; Temporary suspended by HWD 7-2014, f. & cert. ef. 7-9-14

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734-051-8020

## Collaborative Discussion Process for Facility Plans and Access Management Strategies in Project Delivery

(1) If an affected real property owner requests a Collaborative Discussion, the Collaborative Discussion shall be conducted not more than forty five (45) calendar days from the date of written request from the affected real property owner(s), unless the Department and affected real property owner(s) agree to a time extension in writing.

(2) The Region Manager may include any Department staff that he or she finds appropriate or necessary in the Collaborative Discussion process. In addition, the Region Manager shall invite local government representatives, and may include other facility users, economic development representatives or other parties which the Region Manager believes will contribute to finding appropriate solutions. The Collaborative Discussion shall be conducted under the alternative dispute resolution model in ORS 183.502.

(3) The Region Manager shall consider the information presented as part of the Collaborative Discussion and make the final decision. Within twenty-one (21) calendar days following the completion of the Collaborative Discussion, the Region Manager shall notify the property owner(s) in writing of the final decision to:

- (a) Modify the key principles or related methodology; or,
- (b) Finalize or adopt the key principles or related methodology without modifications.

Stat. Auth.: ORS 183.502, 184.616, 184.619, 374.310–374.314, 374.345, 374.355, 374.360  
Stats. Implemented: ORS 374.300 to 374.360, §27, ch. 330, OL 2011, ch. 476, OL 2013  
Hist.: HWD 7-2013(Temp), f. 12-23-13, cert. ef. 1-1-14 thru 6-30-14; Temporary suspended by HWD 2-2014, f. 6-25-14, cert. ef. 6-30-14; Temporary suspended by HWD 7-2014, f. & cert. ef. 7-9-14

734-051-8025

## Access Management Dispute Review Board Process

(1) The actions and recommendations of the Access Management Dispute Review Board are not land use decisions, as defined in ORS 197.015, and may not be appealed to the Land Use Board of Appeals.

(2) Where more than one affected real property owner with the same or similar concerns requests review by an Access Management Dispute Review Board of the Key Principles and related Methodology for a facility plan or an Access Management Methodology for a highway project, the Department may consolidate the reviews.

(3) The Access Management Dispute Review Board shall include the following:

- (a) The Director, or a designee of the Director, who is familiar with the location in which the facility plan is being prepared;
- (b) A representative of the local jurisdiction for which the state highway is located;
- (c) A traffic engineer who practices engineering in Oregon; and
- (d) A representative from the economic or business sector.

(4) The Access Management Dispute Review Board shall be conducted not later than forty-five (45) calendar days from the date of written request from the affected real property owner(s), unless the Department and affected real property owner(s) agree to an time extension in writing. The Access Management Dispute Review Board shall make its recommendation to the Director not later than fourteen (14) calendar days following the conclusion of its deliberations.

Stat. Auth.: ORS 374.310–374.314, 374.345, 374.355, 374.360  
Stats. Implemented: ORS 374.300 to 374.360, §27, ch. 330, OL 2011, ch. 476, OL 2013  
Hist.: HWD 7-2013(Temp), f. 12-23-13, cert. ef. 1-1-14 thru 6-30-14; Temporary suspended by HWD 2-2014, f. 6-25-14, cert. ef. 6-30-14; Temporary suspended by HWD 7-2014, f. & cert. ef. 7-9-14

734-051-8030

## Director Decisions Based on the Recommendations of the Access Management Dispute Review Board

(1) The Director or designee shall consider the recommendations of the Access Management Dispute Review Board and make the final decision. The Director or designee shall notify all parties participating in the review of the final decision in writing to either:

- (a) Modify the key principles or methodology; or
- (b) Finalize or adopt the key principles or methodology without modifications.

(2) The Director or designee's decision under Section (1) of this rule shall be issued not later than twenty-one (21) calendar days after receiving the recommendation of the Access Management Dispute Review Board.

Stat. Auth.: ORS 374.310–374.314, 374.345, 374.355, 374.360  
Stats. Implemented: ORS 374.300 to 374.360, §27, ch. 330, OL 2011, ch. 476, OL 2013  
Hist.: HWD 7-2013(Temp), f. 12-23-13, cert. ef. 1-1-14 thru 6-30-14; Temporary suspended by HWD 2-2014, f. 6-25-14, cert. ef. 6-30-14; Temporary suspended by HWD 7-2014, f. & cert. ef. 7-9-14

## Department of Transportation, Motor Carrier Transportation Division Chapter 740

**Rule Caption:** Amendment of Federal Safety and Hazardous Materials Transportation Regulations Affecting Motor Carriers

**Adm. Order No.:** MCTD 2-2014

**Filed with Sec. of State:** 7-10-2014

**Certified to be Effective:** 7-10-14

**Notice Publication Date:** 3-1-2014

**Rules Amended:** 740-100-0010, 740-100-0065, 740-100-0070, 740-100-0080, 740-100-0085, 740-100-0090, 740-110-0010

**Subject:** These rules contain the annual adoption of federal motor carrier safety and hazardous materials transportation regulations and the adoption of international standards related to driver, vehicle and hazardous materials out-of-service violations. The changes ensure Oregon's motor carrier safety; hazardous materials; and driver, vehicle and hazardous materials out-of-service requirements are current with national and international standards. Minor language was added to OAR 740-100-0010 to comply with federal regulations pertaining to the thirty-four restart rules.

These amendments were originally filed with the Secretary of State on April 23, 2014 and are being refiled to correct a filing error.

**Rules Coordinator:** Lauri Kunze—(503) 986-3171

740-100-0010

### Adoption of Federal Safety Regulations

(1) Except as provided in section (4) of this rule, the rules and regulations adopted by the United States Department of Transportation contained in Title 49, Code of Federal Regulations (CFR), Parts 380 (Special Training Requirements), 382 (Controlled Substances and Alcohol Use and Testing), 383 (Commercial Driver's License Standards Requirements and Penalties), 385 (Safety Fitness Procedures), 387 (Minimum Levels of Financial Responsibility for Motor Carriers), 390 (Federal Motor Carrier Safety Regulations: General), 391 (Qualification of Drivers), 392 (Driving of Motor Vehicles), 393 (Parts and Accessories Necessary for Safe Operation), 395 (Hours of Service of Drivers), 396 (Inspection, Repair and Maintenance), 398 (Transportation of Migrant Workers), 399 (Employee Safety and Health Standards) and all amendments thereto in effect April 1, 2014, are adopted and prescribed by the Department of Transportation (ODOT) to be observed by carriers conducting operations in interstate commerce, subject to ORS Chapter 825.

(2) The provisions of section (1) of this rule as adopted are prescribed by the Department to be observed by carriers conducting operations in intrastate commerce, subject to ORS Chapter 825, except:

(a) Relating to Part 385:

(A) The provisions of Part 385.1(b), 385.13(b), 385.13(c), 385.13(d)(3), 385.301 through 385.337 and Appendix A to Part 385 do not apply to a motor carrier operating exclusively in intrastate commerce.

(B) With reference to Part 385.13(a), 385.19(c) and 385.19(d), current intrastate safety rating information is available from ODOT only by telephone at (503) 378-6963.

(C) With reference to Part 385.15 and 385.17, requests for administrative review of an intrastate safety rating or requests for a change to a proposed or final intrastate safety rating based on corrective actions must be submitted in writing to the ODOT Motor Carrier Transportation Division, 3930 Fairview Industrial Drive SE, Salem OR 97302.

(D) With reference to Appendix B of Part 385, a final intrastate safety rating will be determined by the Department and the motor carrier to whom the rating applies will be notified in writing of its intrastate safety rating.

(E) In addition to the violations described in the List of Acute and Critical Violations in Appendix B of Part 385, the Department will include the following violations in a determination of an intrastate or an interstate safety rating:

(i) Financial responsibility requirements in OAR 740-040-0010 (critical) and 740-040-0020 (acute); and

(ii) Intrastate drivers hours-of-service requirements found in OAR 740-100-0010(2)(i) (critical).

(b) The provisions of Part 387 will apply to intrastate motor carriers only when transporting hazardous materials, hazardous substances or hazardous wastes.

(c) With reference to Part 390.21, external identification requirements do not apply to vehicles operated exclusively in intrastate private carriage

# ADMINISTRATIVE RULES

provided that neither the gross vehicle weight, the gross vehicle weight rating, the gross combination weight or the gross combination weight rating exceeds 26,000 pounds, except those vehicles transporting hazardous materials of a type or quantity requiring placarding or passenger vehicles designed or used to transport more than 15 passengers including the driver.

(d) The rules in Part 391.11(b)(1) regarding the minimum age for a commercial motor vehicle operator do not apply to a driver engaged in intrastate commerce. A driver engaged in intrastate commerce must be at least 18 years old.

(e) The rules in Part 391 (except Part 391.11(b)(2), English Speaking Driver, Part 391.11(b)(5), Valid Operator's License and Part 391.15, Disqualification of Drivers) do not apply to a driver who is employed by a private carrier and:

(A) Does not transport hazardous materials of a type or quantity requiring the vehicle to be marked or placarded in accordance with Title 49, CFR, Part 177.823, and drives a motor vehicle with a gross vehicle weight, gross vehicle weight rating, gross combination weight or gross combination weight rating of 26,000 pounds or less; or

(B) Operates a passenger vehicle designed or used to transport fewer than 16 passengers, including the driver.

(f) Notwithstanding Parts 391.41 to 391.49 (Subpart E — Physical Qualifications and Examinations) the Department may issue a waiver of physical disqualification to a commercial vehicle driver who has met the conditions established by the Driver and Motor Vehicle Services Division.

(g) With reference to Part 395.1(e)(1), motor carriers conducting intrastate transportation of property may not require or permit any driver used by it to exceed 12 hours driving following ten consecutive hours off-duty;

(h) With reference to Part 395.1(g), motor carriers conducting intrastate transportation of property may not require or permit any driver used by it to drive a commercial motor vehicle, nor may any such driver:

(A) Exceed 12 hours driving following ten consecutive hours off-duty;

(B) Drive for any period beyond the 16th hour after coming on-duty following ten consecutive hours off-duty;

(i) With reference to Part 395.1(e)(2) and Part 395.3, a motor carrier conducting intrastate transportation of property may not require or permit any driver used by it to drive a commercial motor vehicle, nor may any such driver:

(A) Exceed 12 hours driving following ten consecutive hours off-duty;

(B) Drive for any period beyond the 16th hour after coming on-duty following ten consecutive hours off-duty;

(C) Drive for any period following 70 hours on-duty in any seven consecutive days if the employing motor carrier does not operate commercial motor vehicles every day of the week, however, any period of seven consecutive days may end with the beginning of any off-duty period of 34 or more consecutive hours which must include two periods from 1 a.m. to 5 a.m. and may only be used once per week; or

(D) Drive for any period following 80 hours on-duty in any eight consecutive days if the employing motor carrier operates commercial motor vehicles every day of the week, however, any period of eight consecutive days may end with the beginning of any off-duty period of 34 or more consecutive hours which must include two periods from 1 a.m. to 5 a.m. and may only be used once per week.

(j) The provisions of subsections (g) through (i) of this section are not applicable to the transportation of hazardous materials of a type or quantity requiring placarding. A motor carrier transporting hazardous materials of a type or quantity requiring placarding must comply with Part 395.

(3) The provisions of Part 386.83(a)(1) and Part 386.84(a)(1), related to sanctions for failure to pay civil monetary penalties are adopted for operations conducted in intrastate commerce and apply to penalties and sanctions found in ORS Chapter 825, pursuant to the provisions of ORS Chapter 183.

(4) The intracity operation exemption adopted by the US Department of Transportation found in Part 391.62 is not adopted and prescribed.

(5) Wherever reference is made in Title 49 of the CFR as adopted by this rule to a federal entity, including but not limited to "Federal Highway Administrator," "Regional Director," "Special Agent of the Federal Highway Administration" or the "Federal Motor Carrier Safety Administration," it will be construed to mean the Oregon Department of Transportation or a person authorized by the Oregon Department of Transportation to act on its behalf.

(6) Copies of the federal regulations referred to in this rule are available from ODOT Motor Carrier Transportation Division or may be

accessed on the Federal Motor Carrier Safety Administration website, [www.fmcsa.dot.gov](http://www.fmcsa.dot.gov).

Stat. Auth.: ORS 184.616, 184.619, 823.011, 825.232 & 825.252

Stats. Implemented: ORS 825.210, 825.250 & 825.252

Hist.: PUC 156, f. 8-6-73, ef. 8-15-73 (Order No. 73-507); PUC 181, f. 12-30-77, ef. 1-15-78 (Order No. 77-896); PUC 4-1979, f. & ef. 9-21-79 (Order No. 79-641); PUC 5-1979, f. & ef. 9-21-79 (Order No. 79-635); PUC 2-1980, f. & ef. 3-27-80 (Order No. 80-179); PUC 3-1980, Part 1, f. & ef. 6-30-80 (Order No. 79-805); Part 2, f. & ef. 6-30-80 (Order No. 80-475); PUC 7-1980, f. & ef. 11-6-80 (Order No. 80-845); Renumbered from 860-035-0010; PUC 12-1981, f. & ef. 12-16-81 (Order No. 81-880); PUC 12-1982(Temp), f. 12-20-82, ef. 1-1-83 (Order No. 82-872); PUC 1-1983, f. & ef. 1-17-83 (Order No. 83-024); PUC 2-1983, f. & ef. 3-1-83 (Order No. 83-117); PUC 13-1984, f. & ef. 7-26-84 (Order No. 84-546); PUC 19-1984, f. & ef. 9-10-84 (Order No. 84-713); PUC 8-1985, f. & ef. 6-10-85 (Order No. 85-499); PUC 17-1986 (Temp), f. & ef. 12-3-86; (Order No. 86-1239); PUC 2-1987 (Temp), f. & ef. 2-25-87 (Order No. 87-248); PUC 4-1987, f. & ef. 6-9-87 (Order No. 87-509); PUC 16-1987(Temp), f. & ef. 12-11-87 (Order No. 87-1244); PUC 4-1988(Temp), f. & cert. ef. 2-12-88 (Order No. 88-161); PUC 6-1988(Temp), f. & cert. ef. 3-9-88 (Order No. 88-818); PUC 14-1988, f. & cert. ef. 7-22-88 (Order No. 88-245); PUC 7-1989, f. & cert. ef. 5-23-89 (Order No. 89-663); PUC 1-1991, f. & cert. ef. 1-11-91 (and corrected 1-31-91) (Order No. 91-20); PUC 6-1992, f. & cert. ef. 2-26-92 (Order No. 92-292); PUC 13-1992(Temp), f. & cert. ef. 9-4-92 (Order No. 92-1303); PUC 10-1993, f. & cert. ef. 6-3-93 (Order No. 93-693 & 93-761); PUC 6-1994, f. & cert. ef. 3-28-94 (Order No. 94-525); PUC 6-1995, f. & cert. ef. 7-13-95 (Order No. 95-562); MCT 3-1996, f. & cert. ef. 3-14-96; Renumbered from 860-065-0010; MCT 4-1996, f. 3-20-96, cert. ef. 4-1-96; MCT 5-1996, f. & cert. ef. 9-17-96; MCT 1-1997, f. 3-24-97, cert. ef. 4-1-97; MCT 2-1997, f. & cert. ef. 5-9-97; MCT 6-1997, f. & cert. ef. 8-26-97; MCT 10-1997, f. & cert. ef. 12-22-97; MCTB 1-1998, f. 3-10-98, cert. ef. 4-1-98; MCTB 2-1998, f. & cert. ef. 8-20-98; MCTB 1-1999, f. & cert. ef. 4-22-99; MCTB 1-2000, f. 3-16-00, cert. ef. 4-1-00; MCTB 2-2001, f. 3-13-01, cert. ef. 4-1-01; MCTB 2-2002, f. & cert. ef. 6-21-02; MCTD 2-2003, f. & cert. ef. 4-21-03; MCTD 6-2003, f. & 11-18-03, cert. ef. 1-1-04; MCTD 2-2005, f. 3-18-05, cert. ef. 4-1-05; MCTD 5-2005(Temp), f. 9-16-05, cert. ef. 10-1-05 thru 3-29-06; MCTD 2-2006, f. 3-17-06, cert. ef. 4-1-06; MCTD 1-2007, f. 3-26-07, cert. ef. 4-1-07; MCTD 1-2008, f. 3-20-08, cert. ef. 4-1-08; MCTD 1-2009, f. 3-20-09, cert. ef. 4-1-09; MCTD 1-2010, f. 3-17-10, cert. ef. 4-1-10; MCTD 2-2011, f. & cert. ef. 5-27-11; MCTD 3-2011, f. & cert. ef. 10-26-11; MCTD 1-2012, f. 2-21-12, cert. ef. 4-1-12; MCTD 5-2012, f. & cert. ef. 5-18-12; MCTD 3-2013, f. & cert. ef. 4-22-13; MCTD 1-2014, f. & cert. ef. 4-23-14; MCTD 2-2014, f. & cert. ef. 7-10-14

## 740-100-0065

### North American Standard Administrative Out-of-Service Criteria

(1) The North American Standard Administrative Out-of-Service Criteria, published by the Commercial Vehicle Safety Alliance, in effect April 1, 2014, is adopted and incorporated into this rule. Inspection violations identified in the Out-of-Service Criteria may be subject to out-of-service action. Condition(s) categorized as "Out-of-Service" must not be allowed to continue in commerce until the condition(s) is/are corrected and the shipment complies with Title 49, CFR. If at the discretion of the inspector, it is less hazardous to the public to relocate the vehicle, it will be towed, transported, or escorted to a safe location only at the direction of an official authority.

(2) Copies of the North American Standard Administrative Out-of-Service Criteria are available from the Commercial Vehicle Safety Alliance at: 6303 Ivy Lane, Suite 310, Greenbelt, MD 20770-6319.

Stat. Auth.: ORS 823.011 & 825.232

Stats. Implemented: ORS 825.210 & 825.252

Hist.: MCTD 1-2009, f. 3-20-09, cert. ef. 4-1-09; MCTD 1-2010, f. 3-17-10, cert. ef. 4-1-10; MCTD 2-2011, f. & cert. ef. 5-27-11; MCTD 1-2012, f. 2-21-12, cert. ef. 4-1-12; MCTD 5-2012, f. & cert. ef. 5-18-12; MCTD 3-2013, f. & cert. ef. 4-22-13; MCTD 1-2014, f. & cert. ef. 4-23-14; MCTD 2-2014, f. & cert. ef. 7-10-14

## 740-100-0070

### North American Standard Vehicle Out-of-Service Criteria

(1) The North American Standard Vehicle Out-of-Service Criteria, published by the Commercial Vehicle Safety Alliance, in effect April 1, 2014, is adopted by and incorporated into this rule. Inspection violations identified in the Out-of-Service Criteria may be subject to one or more of the following:

(a) Out-of-Service Condition: When any motor vehicle by reason of its mechanical condition or loading, is determined to be so unsafe as to likely cause an accident or breakdown or when such conditions would likely contribute to loss of control of the vehicle by the driver, said vehicle must be placed out-of-service. No motor carrier shall permit or require nor shall any person operate any motor vehicle declared and marked "out-of-service" until all required repairs of violations which resulted in the out-of-service condition have been completed. If, at the discretion of the inspector, it is less hazardous to the public to relocate the vehicle, it will be towed, transported or escorted only at the direction of an official authority.

(b) Other: Violations other than out-of-service conditions detected during the inspection process will not preclude the completion of the current trip or dispatch. However, such violations must be corrected or repaired prior to redispach.

(2) Copies of the North American Standard Vehicle Out-of-Service Criteria are available from the Commercial Vehicle Safety Alliance at: 6303 Ivy Lane, Suite 310, Greenbelt, MD 20770-6319.

Stat. Auth.: ORS 823.011 & 825.232

Stats. Implemented: ORS 825.250 & 825.252

# ADMINISTRATIVE RULES

Hist.: PUC 3-1986, f. & ef. 4-18-86 (Order No. 86-372); PUC 7-1989, f. & cert. ef. 5-23-89 (Order No. 89-663); PUC 1-1991, f. & cert. ef. 1-11-91 (Order No. 91-20); PUC 6-1991, f. & cert. ef. 4-9-91 (Order No. 91-455); PUC 6-1992, f. & cert. ef. 2-26-92 (Order No. 92-292); PUC 10-1993, f. & cert. ef. 6-3-93 (Order No. 93-693 & 93-761); PUC 15-1993(Temp), f. & cert. ef. 8-19-93 (Order No. 93-1156); PUC 6-1994, f. & cert. ef. 3-28-94 (Order No. 94-525); PUC 6-1995, f. & cert. ef. 7-13-95 (Order No. 95-562); MCT 3-1996, f. & cert. ef. 3-14-96; Renumbered from 860-065-0030; MCT 4-1996, f. 3-20-96, cert. ef. 4-1-96; MCT 1-1997, f. 3-24-97, cert. ef. 4-1-97; MCTB 1-1998, f. 3-10-98, cert. ef. 4-1-98; MCTB 1-1999, f. & cert. ef. 4-22-99; MCTB 1-2000, f. 3-16-00, cert. ef. 4-1-00; MCTB 2-2001, f. 3-13-01, cert. ef. 4-1-01; MCTB 2-2002, f. & cert. ef. 6-21-02; MCTD 2-2003, f. & cert. ef. 4-21-03; MCTD 6-2003, f. & 11-18-03, cert. ef. 1-1-04; MCTD 2-2005, f. 3-18-05, cert. ef. 4-1-05; MCTD 2-2006, f. 3-17-06, cert. ef. 4-1-06; MCTD 1-2007, f. 3-26-07, cert. ef. 4-1-07; MCTD 1-2008, f. 3-20-08, cert. ef. 4-1-08; MCTD 1-2009, f. 3-20-09, cert. ef. 4-1-09; MCTD 1-2010, f. 3-17-10, cert. ef. 4-1-10; MCTD 2-2011, f. & cert. ef. 5-27-11; MCTD 1-2012, f. 2-21-12, cert. ef. 4-1-12; MCTD 3-2013, f. & cert. ef. 4-22-13; MCTD 1-2014, f. & cert. ef. 4-23-14; MCTD 2-2014, f. & cert. ef. 7-10-14

## 740-100-0080

### North American Standard Hazardous Material Out-of-Service Criteria

(1) The North American Standard Hazardous Materials Out-of-Service Criteria, published by the Commercial Vehicle Safety Alliance, in effect April 1, 2014, is adopted and incorporated in this rule. Inspection violations identified in the Out-of-Service Criteria may be subject to out-of-service action. Condition(s) categorized as "Out-of-Service" must not be allowed to continue in commerce until the condition(s) is/are corrected and the shipment complies with Title 49, CFR. If at the discretion of the inspector, it is less hazardous to the public to relocate the vehicle, it will be towed, transported or escorted to a safe location only at the direction of an official authority.

(2) Copies of the North American Standard Hazardous Materials Out-of-Service Criteria are available from the Commercial Vehicle Safety Alliance at: 6303 Ivy Lane, Suite 310, Greenbelt, MD 20770-6319.

Stat. Auth.: ORS 823.011 & 825.232

Stats. Implemented: ORS 825.250, 825.258 & 825.260

Hist.: PUC 3-1986, f. & ef. 4-18-86 (Order No. 86-377); PUC 7-1989, f. & cert. ef. 5-23-89 (Order No. 89-663); PUC 1-1991, f. & cert. ef. 1-11-91 (Order No. 91-20); PUC 6-1991, f. & cert. ef. 4-9-91 (Order No. 91-455); PUC 6-1992, f. & cert. ef. 2-26-92 (Order No. 92-292); PUC 10-1993, f. & cert. ef. 6-3-93 (Order No. 93-693 & 93-761); PUC 15-1993(Temp), f. & cert. ef. 8-19-93 (Order No. 93-1156); PUC 6-1994, f. & cert. ef. 3-28-94 (Order No. 94-525); PUC 6-1995, f. & cert. ef. 7-13-95 (Order No. 95-562); MCT 3-1996, f. & cert. ef. 3-14-96; Renumbered from 860-065-0035; MCT 4-1996, f. 3-20-96, cert. ef. 4-1-96; MCT 1-1997, f. 3-24-97, cert. ef. 4-1-97; MCTB 1-1998, f. 3-10-98, cert. ef. 4-1-98; MCTB 1-1999, f. & cert. ef. 4-22-99; MCTB 1-2000, f. 3-16-00, cert. ef. 4-1-00; MCTB 2-2001, f. 3-13-01, cert. ef. 4-1-01; MCTB 2-2002, f. & cert. ef. 6-21-02; MCTD 2-2003, f. & cert. ef. 4-21-03; MCTD 6-2003, f. & 11-18-03, cert. ef. 1-1-04; MCTD 2-2005, f. 3-18-05, cert. ef. 4-1-05; MCTD 2-2006, f. 3-17-06, cert. ef. 4-1-06; MCTD 1-2007, f. 3-26-07, cert. ef. 4-1-07; MCTD 1-2008, f. 3-20-08, cert. ef. 4-1-08; MCTD 1-2009, f. 3-20-09, cert. ef. 4-1-09; MCTD 1-2010, f. 3-17-10, cert. ef. 4-1-10; MCTD 2-2011, f. & cert. ef. 5-27-11; MCTD 1-2012, f. 2-21-12, cert. ef. 4-1-12; MCTD 3-2013, f. & cert. ef. 4-22-13; MCTD 1-2014, f. & cert. ef. 4-23-14; MCTD 2-2014, f. & cert. ef. 7-10-14

## 740-100-0085

### North American Standard Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials

(1) The North American Standard Out-of-Service Criteria Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials, published by the Commercial Vehicle Safety Alliance, in effect April 1, 2014, is adopted and incorporated in this rule. Inspection violations identified in the Out-of-Service Criteria may be subject to out-of-service action. Condition(s) categorized as "Out-of-Service" must not be allowed to continue in commerce until the condition(s) is/are corrected and the shipment complies with Title 49, CFR. If at the discretion of the inspector, it is less hazardous to the public to relocate the vehicle, it will be towed, transported or escorted to a safe location only at the direction of an official authority.

(2) Copies of North American Standard Out-of-Service Criteria are available from the Commercial Vehicle Safety Alliance at: 6303 Ivy Lane, Suite 310, Greenbelt, MD 20770-6319.

Stat. Auth.: ORS 823.011 & 825.232

Stats. Implemented: ORS 825.250, 825.258 & 825.260

Hist.: MCTD 1-2009, f. 3-20-09, cert. ef. 4-1-09; MCTD 1-2010, f. 3-17-10, cert. ef. 4-1-10; MCTD 2-2011, f. & cert. ef. 5-27-11; MCTD 1-2012, f. 2-21-12, cert. ef. 4-1-12; MCTD 3-2013, f. & cert. ef. 4-22-13; MCTD 1-2014, f. & cert. ef. 4-23-14; MCTD 2-2014, f. & cert. ef. 7-10-14

## 740-100-0090

### North American Standard Driver Out-of-Service Criteria

(1) Except for any content that conflicts with requirements of section (2) of this rule, the North American Standard Driver Out-of-Service Criteria, published by the Commercial Vehicle Safety Alliance, in effect April 1, 2014, is adopted and incorporated by reference. Inspection viola-

tions identified in the Out-of-Service Criteria may be subject to one or both of the following:

(a) Out-of-Service Violation: Drivers with violations under this category must not operate a commercial motor vehicle for a specified period of time or for some violations until a required condition is met.

(b) Other: Violations other than out-of-service violations require no immediate action by the driver or motor carrier. The carrier must certify in accordance with the terms contained on the inspection document and return it to the Department of Transportation within 15 days.

(2) Drivers found to be disqualified in this state or any other jurisdiction, as specified in 49 CFR 391.15 will be placed Out-of-Service until requalification is established.

(3) Copies of the North American Standard Driver Out-of-Service Criteria are available from the Commercial Vehicle Safety Alliance at: 6303 Ivy Lane, Suite 310, Greenbelt, MD 20770-6319.

Stat. Auth.: ORS 823.011 & 825.232

Stats. Implemented: ORS 825.250 & 825.252

Hist.: PUC 7-1989, f. & cert. ef. 5-23-89 (Order No. 89-663); PUC 1-1991, f. & cert. ef. 1-11-91 (Order No. 91-20); PUC 6-1991, f. & cert. ef. 4-9-91 (Order No. 91-455); PUC 6-1992, f. & cert. ef. 2-26-92 (Order No. 92-292); PUC 15-1993(Temp), f. & cert. ef. 8-19-93 (Order No. 93-1156); PUC 6-1994, f. & cert. ef. 3-28-94 (Order No. 94-525); PUC 6-1995, f. & cert. ef. 7-13-95 (Order No. 95-562); MCT 3-1996, f. & cert. ef. 3-14-96; Renumbered from 860-065-0040; MCT 4-1996, f. 3-20-96, cert. ef. 4-1-96; MCT 1-1997, f. 3-24-97, cert. ef. 4-1-97; MCTB 1-1998, f. 3-10-98, cert. ef. 4-1-98; MCTB 1-1999, f. & cert. ef. 4-22-99; MCTB 1-2000, f. 3-16-00, cert. ef. 4-1-00; MCTB 2-2001, f. 3-13-01, cert. ef. 4-1-01; MCTB 2-2002, f. & cert. ef. 6-21-02; MCTD 2-2003, f. & cert. ef. 4-21-03; MCTD 6-2003, f. & 11-18-03, cert. ef. 1-1-04; MCTD 2-2005, f. 3-18-05, cert. ef. 4-1-05; MCTD 2-2006, f. 3-17-06, cert. ef. 4-1-06; MCTD 1-2007, f. 3-26-07, cert. ef. 4-1-07; MCTD 1-2008, f. 3-20-08, cert. ef. 4-1-08; MCTD 1-2009, f. 3-20-09, cert. ef. 4-1-09; MCTD 1-2010, f. 3-17-10, cert. ef. 4-1-10; MCTD 2-2011, f. & cert. ef. 5-27-11; MCTD 1-2012, f. 2-21-12, cert. ef. 4-1-12; MCTD 3-2013, f. & cert. ef. 4-22-13; MCTD 6-2013, f. & cert. ef. 8-26-13; MCTD 1-2014, f. & cert. ef. 4-23-14; MCTD 2-2014, f. & cert. ef. 7-10-14

## 740-110-0010

### Adoption of United States Department of Transportation Hazardous Materials Regulations

Adoption of United States Department of Transportation Hazardous Materials Regulations

(1) Any person subject to ORS Chapter 825 who transports a hazardous material and any person subject to 823.061 who causes to be transported a hazardous material must comply with the rules and regulations governing the transportation of hazardous materials as prescribed by the United States Department of Transportation in Title 49, Code of Federal Regulations, Part 397 and such portions of Parts 107-178 and 180 as are applicable and amendments thereto, in effect on April 1, 2014.

(2) Copies of the federal regulations referred to in this rule are available from ODOT, Motor Carrier Transportation Division or may be accessed on the Federal Motor Carrier Safety Administration website, [www.fmcsa.dot.gov](http://www.fmcsa.dot.gov).

Stat. Auth.: ORS 823.011, 823.061 & 825.258

Stats. Implemented: ORS 823.061 & 825.258

Hist.: Replied in PUC 18, f. 1-21-55, ef. 9-1-54 (Order No. 33203); PUC 98, f. 1-18-61, ef. 1-12-61 (Order No. 37620); PUC 120, f. 10-26-62, ef. 11-15-62 (Order No. 38811); PUC 132, f. 3-29-65, ef. 4-1-65 (Order No. 41035); PUC 135, f. 5-9-66, ef. 5-15-66 (Order No. 42332); PUC 148, f. 7-29-68, ef. 9-1-68 (Order No. 44783); PUC 150, f. 11-7-68, ef. 12-1-68 (Order No. 45141); PUC 156, f. 8-6-73, ef. 8-15-73 (Order No. 73-507); PUC 181, f. 12-30-77, ef. 1-15-78 (Order No. 77-896); PUC 2-1980, f. & ef. 3-27-80 (Order No. 80-179); PUC 3-1980, Part 1, f. & ef. 6-30-80 (Order No. 79-805); PUC 5-1980, f. & ef. 10-13-80 (Order No. 80-758); Renumbered from 860-036-0055; PUC 1-1981, f. & ef. 2-9-81; PUC 12-1981, f. & ef. 12-16-81 (Order No. 81-880); PUC 6-1982, f. & ef. 5-6-82 (Order No. 82-336); PUC 1-1983, f. & ef. 1-17-83 (Order No. 83-024); PUC 1-1984, f. & ef. 2-9-84 (Order No. 84-076); PUC 13-1984, f. & ef. 7-26-84 (Order No. 84-546); PUC 8-1985, f. & ef. 6-10-85 (Order No. 85-499); PUC 7-1986(Temp), f. & ef. 7-25-86 (Order No. 86-736); PUC 13-1986, f. & ef. 10-30-86 (Order No. 86-1106); PUC 7-1989, f. & cert. ef. 5-23-89 (Order No. 89-663); PUC 1-1991, f. & cert. ef. 1-11-91 (Order No. 91-20); PUC 6-1992, f. & cert. ef. 2-26-92 (Order No. 92-292); PUC 10-1993, f. & cert. ef. 6-3-93 (Order No. 93-693 & 93-761); PUC 6-1994, f. & cert. ef. 3-28-94 (Order No. 94-525); PUC 6-1995, f. & cert. ef. 7-13-95 (Order No. 95-562); MCT 1-1996, f. 2-16-96, cert. ef. 4-1-96; Renumbered from 860-066-0055; MCT 3-1996, f. & cert. ef. 3-14-96; MCT 5-1996, f. & cert. ef. 9-17-96; MCT 1-1997, f. 3-24-97, cert. ef. 4-1-97; MCTB 1-1998, f. 3-10-98, cert. ef. 4-1-98; MCTB 1-1999, f. & cert. ef. 4-22-99; MCTB 1-2000, f. 3-16-00, cert. ef. 4-1-00; MCTB 2-2001, f. 3-13-01, cert. ef. 4-1-01; MCTB 2-2002, f. & cert. ef. 6-21-02; MCTD 2-2003, f. & cert. ef. 4-21-03; MCTD 6-2003, f. 11-18-03, cert. ef. 1-1-04; MCTD 2-2005, f. 3-18-05, cert. ef. 4-1-05; MCTD 2-2006, f. 3-17-06, cert. ef. 4-1-06; MCTD 1-2007, f. 3-26-07, cert. ef. 4-1-07; MCTD 1-2008, f. 3-20-08, cert. ef. 4-1-08; MCTD 1-2009, f. 3-20-09, cert. ef. 4-1-09; MCTD 1-2010, f. 3-17-10, cert. ef. 4-1-10; MCTD 2-2011, f. & cert. ef. 5-27-11; MCTD 1-2012, f. 2-21-12, cert. ef. 4-1-12; MCTD 3-2013, f. & cert. ef. 4-22-13; MCTD 1-2014, f. & cert. ef. 4-23-14; MCTD 2-2014, f. & cert. ef. 7-10-14

## Economic Recovery Review Council Chapter 966

**Rule Caption:** This rule amendment relates to the Economic Recovery Review Council.

**Adm. Order No.:** ERRC 1-2014

**Filed with Sec. of State:** 6-30-2014

# ADMINISTRATIVE RULES

**Certified to be Effective:** 7-1-14

**Notice Publication Date:** 6-1-2014

**Rules Adopted:** 966-100-0600

**Subject:** The Economic Recovery Review Council met on March 27, 2014 and approved a new Regionally Significant Industrial Area (RISA) names the Spalding Industrial Area. This rule amendment describes this new RISA specifying acreage and parcel areas.

**Rules Coordinator:** Mindee Sublette—(503) 986-0036

## 966-100-0600

### Spalding Industrial Area

(1) The Spalding Industrial Area was approved by the ERRC as a designated RSIA on March 27, 2014.

(2) The Spalding Industrial Area located in Grants Pass, consists of 172 acres and is comprised of the following 135.6 parcel acres:

(a) The 34 parcels at the designated area are as follows:

(A) Tax Lot —: 36052200000200

(i) Acres — 1.0 and 19.7

(ii) Address — 450 Ament Rd.

(B) Tax Lot —: 36052200000300

(i) Acres — 8.6

(ii) Address — 2280 Spalding Ave.

(C) Tax Lot —: 36052200000400

(i) Acres — 9.7

(ii) Address — 2300 Spalding Ave.

(D) Tax Lot —: 360521A0000101

(i) Acres — 3.1

(ii) Address — 2123 NE Spalding Avenue.

(E) Tax Lot —: 360521A0000102

(i) Acres — 0.7

(ii) Address — 2137 NE Industry Drive.

(F) Tax Lot —: 360521A0000103

(i) Acres — 0.6

(ii) Address — 2151 NE Industry Drive.

(G) Tax Lot —: 360521A0000104

(i) Acres — 1.0

(ii) Address — 2165 NE Industry Drive.

(H) Tax Lot —: 360521A0000105

(i) Acres — 1.2

(ii) Address — 2179 NE Industry Drive.

(I) Tax Lot —: 360521A0000106

(i) Acres — 0.5

(ii) Address — 2186 NE Industry Drive.

(J) Tax Lot —: 360521A0000107

(i) Acres — 0.9

(ii) Address — 2172 NE Industry Drive.

(K) Tax Lot —: 360521A0000109

(i) Acres — 0.9

(ii) Address — 2144 NE Industry Drive.

(L) Tax Lot —: 360521A0000301

(i) Acres — 0.8

(ii) Address — 2200 Industry Drive.

(M) Tax Lot —: 360521A0000302

(i) Acres — 4.1

(ii) Address — 2214 Industry Drive.

(N) Tax Lot —: 360521A0000303

(i) Acres — 1.4

(ii) Address — 144 Assembly Circle.

(O) Tax Lot —: 360521A0000304

(i) Acres — 1.4

(ii) Address — 129 Assembly Circle.

(P) Tax Lot —: 360521A0000305

(i) Acres — 2.3

(ii) Address — 115 Assembly Circle.

(Q) Tax Lot —: 360521A0000306

(i) Acres — 3.4

(ii) Address — 101 Assembly Circle.

(R) Tax Lot —: 360521A0000307

(i) Acres — 2.7

(ii) Address — 2207 Industry Drive.

(S) Tax Lot —: 360521A0000309

(i) Acres — 10.7 and 25.8

(ii) Address — 2151 NE Spalding Avenue.

(T) Tax Lot —: 360521A0000900

(i) Acres — 0.5

(ii) Address — 605 NE Agness Avenue.

(U) Tax Lot —: 360521A0001100

(i) Acres — 3.5

(ii) Address — 2100 NE Spalding Avenue.

(V) Tax Lot —: 360521A0001102

(i) Acres — 1.5

(ii) Address — 2150 NE Spalding Avenue.

(W) Tax Lot —: 360521A0001103

(i) Acres — 4.7

(ii) Address — 2164 NE Spalding Avenue.

(X) Tax Lot —: 360521A0001104

(i) Acres — 0.7

(ii) Address — 2188 NE Spalding Avenue.

(Y) Tax Lot —: 360521A0001105

(i) Acres — 3.0

(ii) Address — 2245 NE Spalding Avenue.

(Z) Tax Lot —: 360521A0001106

(i) Acres — 1.4

(ii) Address — 2207 NE Spalding Avenue.

(AA) Tax Lot —: 360521A0001107

(i) Acres — 2.4

(ii) Address — 2185 NE Spalding Avenue.

(BB) Tax Lot —: 360521A0001108

(i) Acres — 2.6

(ii) Address — 2163 NE Spalding Avenue.

(CC) Tax Lot —: 360521A0001109

(i) Acres — 2.5.

(ii) Address — 2143 NE Spalding Avenue.

(DD) Tax Lot —: 360521A0001110

(i) Acres — 4.6

(ii) Address — 2101 NE Spalding Avenue.

(EE) Tax Lot —: 360522BC000100

(i) Acres — 5.6

(ii) Address — NE Spalding Avenue.

(FF) Tax Lot —: 360522BC000600

(i) Acres — 2.1

(ii) Address — 2285 NE Spalding Avenue.

Stats Auth: ORS 197.723

Stats Implemented: ORS 197.723

Hist.: ERRC 1-2014, f. 6-30-14, cert. ef. 7-1-14

## Higher Education Coordinating Commission Chapter 715

**Rule Caption:** Delegation of Authority to HECC Executive Director for University Quarterly Allotment Purposes

**Adm. Order No.:** HECC 3-2014(Temp)

**Filed with Sec. of State:** 6-25-2014

**Certified to be Effective:** 6-25-14 thru 12-22-14

**Notice Publication Date:**

**Rules Adopted:** 715-013-0010

**Subject:** Delegation of authority to the HECC Executive Director to execute all administrative and operational tasks associated with instructing DAS as to the timing and amount of quarterly allotment of state funds to the three independent universities (OSU, PSU, and UO) and the Oregon University System (EOU, OIT, SOU, and WOU). Division 13: Public Universities, will be created as a result of this adoption.

**Rules Coordinator:** Angela Rico—(503) 378-5690

### 715-013-0010

#### Allotment Authority

The Commission delegates to the Executive Director, or designee, authority in all areas of fiscal and administrative responsibility necessary for the execution of Commission policy relating to the allotment of funds to public universities.

Stat. Auth.: ORS 351.054, 351.735

Stats. Implemented: 2013 SB 270, 2013 HB 3120

Hist.: HECC 3-2014(Temp), f. & cert. ef. 6-25-14 thru 12-22-14

**Rule Caption:** Process and standards for HECC approval changes to academic programs at universities Defines significant change

**Adm. Order No.:** HECC 4-2014(Temp)

**Filed with Sec. of State:** 6-25-2014

**Certified to be Effective:** 6-25-14 thru 12-22-14

# ADMINISTRATIVE RULES

## Notice Publication Date:

**Rules Adopted:** 715-013-0050, 715-013-0055

**Subject:** Establishes basic process and standards for HECC approval of significant changes to academic programs at public universities. Defines “significant change.”

**Rules Coordinator:** Angela Rico—(503) 378-5690

## 715-013-0050

### Definitions

“Significant change to a university’s academic program” includes, but is not limited to, any new undergraduate or graduate degree program, or any existing undergraduate or graduate degree program that will be offered more than 40 miles from the site at which it is currently offered. “Significant change to a university’s academic program” does not mean a new undergraduate or graduate certificate program, new minor, or a new name for an existing degree program.

Stat. Auth.: ORS 352.089 & 351.735(3)(g)

Stats. Implemented: ORS 352.089 & 51.735(3)(g)

Hist.: HECC 4-2014(Temp), f. & cert. ef. 6-25-14 thru 12-22-14

## 715-013-0055

### General Public University Program Approval Requirements

(1) The Higher Education Coordinating Commission has responsibility for approval of significant changes to public university programs.

(2) The Higher Education Coordinating Commission shall provide the governing boards of public universities with the standards, criteria and procedures the Commission will utilize to approve significant changes to a university’s academic programs. This criteria will include consideration of the recommendation of the public university seeking to make the change and will ensure that approved programs:

(a) Are consistent with the mission statement of the public university;

(b) Do not unnecessarily duplicate academic programs offered by Oregon’s other community colleges or public universities;

(c) Are not located in a geographic area that will cause undue hardship to Oregon’s other community colleges or public universities; and

(d) Are allocated among Oregon’s community colleges and public universities to maximize the achievement of statewide needs and requirements.

(3) Requests for approval of significant changes to a university’s academic program must be submitted by the governing board of the university to the Higher Education Coordinating Commission prior to commencement of the program.

Stat. Auth.: ORS 352.089 & 351.735(3)(g)

Stats. Implemented: ORS 352.089 & 51.735(3)(g)

Hist.: HECC 4-2014(Temp), f. & cert. ef. 6-25-14 thru 12-22-14

## Oregon Board of Dentistry Chapter 818

**Rule Caption:** Amends rules regarding Fees, Practice, Conduct, Infection Control, Continuing Education, Hygiene, Anesthesia and Radiologic Proficiency.

**Adm. Order No.:** OBD 1-2014

**Filed with Sec. of State:** 7-2-2014

**Certified to be Effective:** 8-1-14

**Notice Publication Date:** 6-1-2014

**Rules Amended:** 818-001-0087, 818-012-0005, 818-012-0030, 818-012-0040, 818-021-0060, 818-021-0070, 818-026-0050, 818-026-0055, 818-026-0060, 818-026-0065, 818-026-0070, 818-035-0025, 818-035-0030, 818-035-0040, 818-042-0040, 818-042-0050, 818-042-0060, 818-042-0090, 818-042-0120, 818-042-0130

**Subject:** The Board is amending 818-001-0087 Fees to add a Non-Resident Dental Permit fee.

The Board is amending 818-012-0005 Scope of Practice to correct the name of an organization referenced in rule.

The Board is amending 818-012-0030 Unprofessional Conduct so that failure to maintain a current BLS/CPR training or its equivalent is unprofessional conduct.

The Board is amending 818-012-0040 Infection Control Guidelines to clarify the rule regarding testing and proper function of heat sterilization devices each calendar week.

The Board is amending 818-021-0060 Continuing Education - Dentists to add 2 hours of continuing education related to infection control.

The Board is amending 818-021-0070 Continuing Education - Dental Hygienists to add 2 hours of continuing education related to infection control.

The Board is amending 818-026-0050 Minimal Sedation Permit to add that after training a dental assistant may administer oral sedative agents or anxiolysis agents calculated and dispensed by a dentist under direct supervision.

The Board is amending 818-026-0055 Dental Hygiene and Dental Assistant Procedures Performed Under Nitrous Oxide or Minimal Sedation to clarify the protocols and pre and post operative care required.

The Board is amending 818-026-0060 Moderate Sedation Permit to allow dental assistants to dispense oral medications that have been prepared by the dentist permit holder for oral administration under direct supervision.

The Board is amending 818-026-0065 Deep Sedation Permit to clarify the criteria for recovery and transportation of a patient that has been sedated.

The Board is amending 818-026-0070 General Anesthesia Permit to clarify that a patient remain in operator for the duration of treatment until criteria for recovery have been met.

The Board is amending 818-035-0025 Prohibitions to remove the word prescribe from the rule. OBD legal counsel has opined that dental hygienists do not have statutory authority to prescribe drugs referenced in OARs.

The Board is amending 818-035-0030 Additional Functions of Dental Hygienists to remove the word prescribe from the rule. OBD legal counsel has opined that dental hygienists do not have statutory authority to prescribe drugs referenced in rule. The rule change would also allow the removal of cement and adhesive material when using high-speed handpieces.

The Board is amending 818-035-0040 Expanded Functions of Dental Hygienists to add the ability to administer local anesthetic reversal agents and clarify the age and weight of patients for this.

The Board is amending 818-042-0040 Prohibited Acts to clarify that over the counter medications may be administered per package instructions.

The Board is amending 818-042-0050 Taking of X-Rays - Exposing of Radiographs

to clarify the rules regarding assistants exposing radiographs.

The Board is amending 818-042-0060 Certification- Radiologic Proficiency to rename agency referenced in rule.

The Board is amending 818-042-0090 Additional Functions of EFDAs to clarify the wording of the rule.

The Board is amending 818-042-0120 Certification by Credential to rename a state agency referenced in rule.

The Board is amending 818-042-0130 Application for Certification by Credential to rename a state agency referenced in rule.

**Rules Coordinator:** Stephen Prisby—(971) 673-3200

## 818-001-0087

### Fees

(1) The Board adopts the following fees:

(a) Biennial License Fees:

(A) Dental — \$315;

(B) Dental — retired — \$0;

(C) Dental Faculty — \$260;

(D) Volunteer Dentist — \$0;

(E) Dental Hygiene — \$155;

(F) Dental Hygiene — retired — \$0;

(G) Volunteer Dental Hygienist — \$0.

(b) Biennial Permits, Endorsements or Certificates:

(A) Nitrous Oxide Permit — \$40;

(B) Minimal Sedation Permit — \$75;

(C) Moderate Sedation Permit — \$75;

(D) Deep Sedation Permit — \$75;

(E) General Anesthesia Permit — \$140;

(F) Radiology — \$75;

(G) Expanded Function Dental Assistant — \$50;

(H) Expanded Function Orthodontic Assistant — \$50;

# ADMINISTRATIVE RULES

- (I) Instructor Permits — \$40;
- (J) Dental Hygiene Restorative Functions Endorsement — \$50;
- (K) Restorative Functions Dental Assistant — \$50;
- (L) Anesthesia Dental Assistant — \$50;
- (M) Dental Hygiene, Expanded Practice Permit — \$75;
- (N) Non-Resident Dental Permit - \$100.00;
- (c) Applications for Licensure:
  - (A) Dental — General and Specialty — \$345;
  - (B) Dental Faculty — \$305;
  - (C) Dental Hygiene — \$180;
  - (D) Licensure Without Further Examination — Dental and Dental Hygiene — \$790.

- (d) Examinations:
  - (A) Jurisprudence — \$0;
  - (B) Dental Specialty:

(i) If only one candidate applies for the exam, a fee of \$2,000.00 will be required at the time of application; and

(ii) If two candidates apply for the exam, a fee of \$1,000.00 will be required at the time of application; and

(iii) If three or more candidates apply for the exam, a fee of \$750.00 will be required at the time of application.

- (e) Duplicate Wall Certificates — \$50.

(2) Fees must be paid at the time of application and are not refundable.

(3) The Board shall not refund moneys under \$5.01 received in excess of amounts due or to which the Board has no legal interest unless the person who made the payment or the person's legal representative requests a refund in writing within one year of payment to the Board.

Stat. Auth.: ORS 679 & 680  
Stats. Implemented: ORS 293.445, 679.060, 679.115, 679.120, 679.250, 680.050, 680.075, 680.200 & 680.205  
Hist.: DE 6-1985(Temp), f. & cf. 9-20-85; DE 3-1986, f. & cf. 3-31-86; DE 1-1987, f. & cf. 10-7-87; DE 1-1988, f. 12-28-88, cert. ef. 2-1-89, corrected by DE 1-1989, f. 1-27-89, cert. ef. 2-1-89; Renumbered from 818-001-0085; DE 2-1989(Temp), f. & cert. ef. 11-30-89; DE 1-1990, f. 3-19-90, cert. ef. 4-2-90; DE 1-1991(Temp), f. 8-5-91, cert. ef. 8-15-91; DE 2-1991, f. & cert. ef. 12-31-91; DE 1-1992(Temp), f. & cert. ef. 6-24-92; DE 2-1993, f. & cert. ef. 7-13-93; OBD 1-1998, f. & cert. ef. 6-8-98; OBD 3-1999, f. 6-25-99, cert. ef. 7-1-99; Administrative correction, 8-2-99; OBD 5-2000, f. 6-22-00, cert. ef. 7-1-00; OBD 8-2001, f. & cert. ef. 1-8-01; OBD 2-2005, f. 1-31-05, cert. ef. 2-1-05; OBD 2-2007, f. 4-26-07, cert. ef. 5-1-07; OBD 3-2007, f. & cert. ef. 11-30-07; OBD 1-2009(Temp), f. 6-11-09, cert. ef. 7-1-09 thru 11-1-09; OBD 2-2009, f. 10-21-09, cert. ef. 11-1-09; OBD 1-2010, f. 6-22-10, cert. ef. 7-1-10; OBD 3-2011(Temp), f. 6-30-11, cert. ef. 7-1-11 thru 12-27-11; OBD 4-2011, f. & cert. ef. 11-15-11; OBD 1-2012, f. & cert. ef. 1-27-12; OBD 1-2013, f. 5-15-13, cert. ef. 7-1-13; OBD 1-2014, f. 7-2-14, cert. ef. 8-1-14

## 818-012-0005

### Scope of Practice

- (1) No dentist may perform any of the procedures listed below:

- (a) Rhinoplasty;
- (b) Blepharoplasty;
- (c) Rhytidectomy;
- (d) Submental liposuction;
- (e) Laser resurfacing;
- (f) Browlift, either open or endoscopic technique;
- (g) Platysmal muscle plication;
- (h) Otoplasty;
- (i) Dermabrasion;
- (j) Lip augmentation;
- (k) Hair transplantation, not as an isolated procedure for male pattern baldness; and

(1) Harvesting bone extra orally for dental procedures, including oral and maxillofacial procedures.

- (2) Unless the dentist:

(a) Has successfully completed a residency in Oral and Maxillofacial Surgery accredited by the American Dental Association, Commission on Dental Accreditation (CODA), and

(b) Has successfully completed a clinical fellowship, of at least one continuous year in duration, in esthetic (cosmetic) surgery recognized by the American Association of Oral and Maxillofacial Surgeons or by the American Dental Association Commission on Dental Accreditation, or

- (c) Holds privileges either:

(A) Issued by a credentialing committee of a hospital accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) to perform these procedures in a hospital setting; or

(B) Issued by a credentialing committee for an ambulatory surgical center licensed by the State of Oregon and accredited by either the JCAHO or the Accreditation Association for Ambulatory Health Care (AAAHC).

(3) A dentist may utilize Botulinum Toxin Type A to treat a condition that is within the scope of the practice of dentistry after completing a min-

imum of 16 hours in a hands on clinical course(s) in which the provider is approved by the Academy of General Dentistry Program Approval for Continuing Education (AGD PACE) or by the American Dental Association Continuing Education Recognition Program (ADA CERP).

Stat. Auth.: ORS 679 & 680

Stats. Implemented: ORS 679.010(2), 679.140(1)(c), 679.140(2), 679.170(6) & 680.100

Hist.: OBD 6-2001, f. & cert. ef. 1-8-01; OBD 1-2013, f. 5-15-13, cert. ef. 7-1-13; OBD 3-2013, f. 10-24-13, cert. ef. 1-1-14; OBD 1-2014, f. 7-2-14, cert. ef. 8-1-14

## 818-012-0030

### Unprofessional Conduct

The Board finds that in addition to the conduct set forth in ORS 679.140(2), a licensee engages in unprofessional conduct if the licensee does or permits any person to:

- (1) Attempt to obtain a fee by fraud or misrepresentation.

- (2) Obtaining a fee by fraud or misrepresentation.

(a) A licensee obtains a fee by fraud if the licensee obtains a fee by knowingly making or permitting any person to make a material, false statement intending that a recipient who is unaware of the truth rely upon the statement.

(b) A licensee obtains a fee by misrepresentation if the licensee obtains a fee through making or permitting any person to make a material, false statement.

(c) Giving cash discounts and not disclosing them to third party payors is not fraud or misrepresentation.

(3) Offer rebates, split fees, or commissions for services rendered to a patient to any person other than a partner, employee, or employer.

(4) Accept rebates, split fees, or commissions for services rendered to a patient from any person other than a partner, employee, or employer.

(5) Initiate, or engage in, with a patient, any behavior with sexual connotations. The behavior can include but is not limited to, inappropriate physical touching; kissing of a sexual nature; gestures or expressions, any of which are sexualized or sexually demeaning to a patient; inappropriate procedures, including, but not limited to, disrobing and draping practices that reflect a lack of respect for the patient's privacy; or initiating inappropriate communication, verbal or written, including, but not limited to, references to a patient's body or clothing that are sexualized or sexually demeaning to a patient; and inappropriate comments or queries about the professional's or patient's sexual orientation, sexual performance, sexual fantasies, sexual problems, or sexual preferences.

(6) Engage in an unlawful trade practice as defined in ORS 646.605 to 646.608.

(7) Fail to present a treatment plan with estimated costs to a patient upon request of the patient or to a patient's guardian upon request of the patient's guardian.

- (8) Misrepresent any facts to a patient concerning treatment or fees.

(9)(a) Fail to provide a patient or patient's guardian within 14 days of written request:

- (A) Legible copies of records; and

(B) Duplicates of study models and radiographs, photographs or legible copies thereof if the radiographs, photographs or study models have been paid for.

(b) The dentist may require the patient or guardian to pay in advance a fee reasonably calculated to cover the costs of making the copies or duplicates. The dentist may charge a fee not to exceed \$30 for copying 10 or fewer pages of written material and no more than \$0.50 per page for pages 11 through 50 and no more than \$0.25 for each additional page (including records copied from microfilm), plus any postage costs to mail copies requested and actual costs of preparing an explanation or summary of information, if requested. The actual cost of duplicating x-rays may also be charged to the patient. Patient records or summaries may not be withheld from the patient because of any prior unpaid bills, except as provided in (9)(a)(B) of this rule.

(10) Fail to identify to a patient, patient's guardian, or the Board the name of an employee, employer, contractor, or agent who renders services.

(11) Use prescription forms pre-printed with any Drug Enforcement Administration number, name of controlled substances, or facsimile of a signature.

(12) Use a rubber stamp or like device to reproduce a signature on a prescription form or sign a blank prescription form.

(13) Order drugs listed on Schedule II of the Drug Abuse Prevention and Control Act, 21 U.S.C. Sec. 812, for office use on a prescription form.

- (14) Violate any Federal or State law regarding controlled substances.

(15) Becomes addicted to, or dependent upon, or abuses alcohol, illegal or controlled drugs, or mind altering substances.

# ADMINISTRATIVE RULES

(16) Practice dentistry or dental hygiene in a dental office or clinic not owned by an Oregon licensed dentist(s), except for an entity described under ORS 679.020(3) and dental hygienists practicing pursuant to ORS 680.205(1)(2).

(17) Make an agreement with a patient or person, or any person or entity representing patients or persons, or provide any form of consideration that would prohibit, restrict, discourage or otherwise limit a person's ability to file a complaint with the Oregon Board of Dentistry; to truthfully and fully answer any questions posed by an agent or representative of the Board; or to participate as a witness in a Board proceeding.

(18) Fail to maintain at a minimum a current Health Care Provider Basic Life Support (BLS)/Cardio Pulmonary Resuscitation (CPR) training or its equivalent. (Effective January 1, 2015)

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 679 & 680

Stats. Implemented: ORS 679.140(1)(c), 679.140(2), 679.170(6) & 680.100

Hist.: DE 6, f. 8-9-63, ef. 9-11-63; DE 14, f. 1-20-72, ef. 2-10-72; DE 5-1980, f. & ef. 12-26-80; DE 2-1982, f. & ef. 3-19-82; DE 5-1982, f. & ef. 5-26-82; DE 9-1984, f. & ef. 5-17-84; Renumbered from 818-010-0080; DE 3-1986, f. & ef. 3-31-86; DE 1-1988, f. 12-28-88, cert. ef. 2-1-89; DE 1-1989, f. 1-27-89, cert. ef. 2-1-89; Renumbered from 818-011-0020; DE 1-1990, f. 3-19-90, cert. ef. 4-2-90; DE 2-1997, f. & cert. ef. 2-20-97; OBD 3-1999, f. 6-25-99, cert. ef. 7-1-99; OBD 1-2006, f. 3-17-06, cert. ef. 4-1-06; OBD 1-2007, f. & cert. ef. 3-1-07; OBD 3-2007, f. & cert. ef. 11-30-07; OBD 1-2008, f. 11-10-08, cert. ef. 12-1-08; OBD 2-2009, f. 10-21-09, cert. ef. 11-1-09; OBD 1-2014, f. 7-2-14, cert. ef. 8-1-14

## 818-012-0040

### Infection Control Guidelines

In determining what constitutes unacceptable patient care with respect to infection control, the Board may consider current infection control guidelines such as those of the Centers for Disease Control and Prevention and the American Dental Association. Additionally, licensees must comply with the following requirements:

(1) Disposable gloves shall be worn whenever placing fingers into the mouth of a patient or when handling blood or saliva contaminated instruments or equipment. Appropriate hand hygiene shall be performed prior to gloving.

(2) Masks and protective eyewear or chin-length shields shall be worn by licensees and other dental care workers when spattering of blood or other body fluids is likely.

(3) Between each patient use, instruments or other equipment that come in contact with body fluids shall be sterilized.

(4) Heat sterilizing devices shall be tested for proper function by means of a biological monitoring system that indicates micro-organisms kill each calendar week in which scheduled patients are treated. Testing results shall be retained by the licensee for the current calendar year and the two preceding calendar years.

(5) Environmental surfaces that are contaminated by blood or saliva shall be disinfected with a chemical germicide which is mycobactericidal at use.

(6) Impervious backed paper, aluminum foil, or plastic wrap may be used to cover surfaces that may be contaminated by blood or saliva and are difficult or impossible to disinfect. The cover shall be replaced between patients.

(7) All contaminated wastes and sharps shall be disposed of according to any governmental requirements.

Stat. Auth.: ORS 679.120, 679.250(7), 680.075 & 680.150

Stats. Implemented: ORS 679.140, 679.140(4) & 680.100

Hist.: DE 1-1988, f. 12-28-88, cert. ef. 2-1-89; DE 1-1989, f. 1-27-89, cert. ef. 2-1-89; DE 2-1992, f. & cert. ef. 6-24-92; OBD 1-2004, f. 5-27-04, cert. ef. 6-1-04; OBD 1-2008, f. 11-10-08, cert. ef. 12-1-08; OBD 3-2013, f. 10-24-13, cert. ef. 1-1-14; OBD 1-2014, f. 7-2-14, cert. ef. 8-1-14

## 818-021-0060

### Continuing Education — Dentists

(1) Each dentist must complete 40 hours of continuing education every two years. Continuing education (C.E.) must be directly related to clinical patient care or the practice of dental public health.

(2) Dentists must maintain records of successful completion of continuing education for at least four licensure years consistent with the licensee's licensure cycle. (A licensure year for dentists is April 1 through March 31.) The licensee, upon request by the Board, shall provide proof of successful completion of continuing education courses.

(3) Continuing education includes:

(a) Attendance at lectures, study clubs, college post-graduate courses, or scientific sessions at conventions.

(b) Research, graduate study, teaching or preparation and presentation of scientific sessions. No more than 12 hours may be in teaching or scientific sessions. (Scientific sessions are defined as scientific presentations, table clinics, poster sessions and lectures.)

(c) Correspondence courses, videotapes, distance learning courses or similar self-study course, provided that the course includes an examination and the dentist passes the examination.

(d) Continuing education credit can be given for volunteer pro bono dental services provided in the state of Oregon; community oral health instruction at a public health facility located in the state of Oregon; authorship of a publication, book, chapter of a book, article or paper published in a professional journal; participation on a state dental board, peer review, or quality of care review procedures; successful completion of the National Board Dental Examinations taken after initial licensure; a recognized specialty examination taken after initial licensure; or test development for clinical dental, dental hygiene or specialty examinations. No more than 6 hours of credit may be in these areas.

(4) At least three hours of continuing education must be related to medical emergencies in a dental office. No more than four hours of Practice Management and Patient Relations may be counted toward the C.E. requirement in any renewal period.

(5) All dentists licensed by the Oregon Board of Dentistry will complete a one-hour pain management course specific to Oregon provided by the Pain Management Commission of the Oregon Health Authority. All applicants or licensees shall complete this requirement by January 1, 2010 or within 24 months of the first renewal of the dentist's license.

(6) At least 2 hours of continuing education must be related to infection control. (Effective January 1, 2015.)

Stat. Auth.: ORS 679

Stats. Implemented: ORS 679.250(9)

Hist.: DE 3-1987, f. & ef. 10-15-87; DE 4-1987(Temp), f. & ef. 11-25-87; DE 1-1988, f. 12-28-88, cert. ef. 2-1-89; DE 1-1989, f. 1-27-89, cert. ef. 2-1-89; Renumbered from 818-020-0072; DE 1-1990, f. 3-19-90, cert. ef. 4-2-90; OBD 9-2000, f. & cert. ef. 7-28-00; OBD 16-2001, f. 12-7-01, cert. ef. 4-1-02; OBD 3-2007, f. & cert. ef. 11-30-07; OBD 2-2009, f. 10-21-09, cert. ef. 11-1-09; OBD 3-2011(Temp), f. 6-30-11, cert. ef. 7-1-11 thru 12-27-11; OBD 4-2011, f. & cert. ef. 11-15-11; OBD 1-2014, f. 7-2-14, cert. ef. 8-1-14

## 818-021-0070

### Continuing Education — Dental Hygienists

(1) Each dental hygienist must complete 24 hours of continuing education every two years. An Expanded Practice Permit Dental Hygienist shall complete a total of 36 hours of continuing education every two years. Continuing education (C.E.) must be directly related to clinical patient care or the practice of dental public health.

(2) Dental hygienists must maintain records of successful completion of continuing education for at least four licensure years consistent with the licensee's licensure cycle. (A licensure year for dental hygienists is October 1 through September 30.) The licensee, upon request by the Board, shall provide proof of successful completion of continuing education courses.

(3) Continuing education includes:

(a) Attendance at lectures, study clubs, college post-graduate courses, or scientific sessions at conventions.

(b) Research, graduate study, teaching or preparation and presentation of scientific sessions. No more than six hours may be in teaching or scientific sessions. (Scientific sessions are defined as scientific presentations, table clinics, poster sessions and lectures.)

(c) Correspondence courses, videotapes, distance learning courses or similar self-study course, provided that the course includes an examination and the dental hygienist passes the examination.

(d) Continuing education credit can be given for volunteer pro bono dental hygiene services provided in the state of Oregon; community oral health instruction at a public health facility located in the state of Oregon; authorship of a publication, book, chapter of a book, article or paper published in a professional journal; participation on a state dental board, peer review, or quality of care review procedures; successful completion of the National Board Dental Hygiene Examination, taken after initial licensure; or test development for clinical dental hygiene examinations. No more than 6 hours of credit may be in these areas.

(4) At least three hours of continuing education must be related to medical emergencies in a dental office. No more than two hours of Practice Management and Patient Relations may be counted toward the C.E. requirement in any renewal period.

(5) Dental hygienists who hold a Nitrous Oxide Permit must meet the requirements contained in OAR 818-026-0040(9) for renewal of the Nitrous Oxide Permit.

(6) At least 2 hours of continuing education must be related to infection control. (Effective January 1, 2015.)

Stat. Auth.: ORS 679

Stats. Implemented: ORS 279.250(9)

Hist.: DE 3-1987, f. & ef. 10-15-87; DE 1-1988, f. 12-28-88, cert. ef. 2-1-89; DE 1-1989, f. 1-27-89, cert. ef. 2-1-89; Renumbered from 818-020-0073; DE 1-1990, f. 3-19-90, cert. ef. 4-2-90; OBD 9-2000, f. & cert. ef. 7-28-00; OBD 2-2002, f. 7-31-02, cert. ef. 10-1-02; OBD 2-2004, f. 7-12-04, cert. ef. 7-15-04; OBD 3-2007, f. & cert. ef. 11-30-07; OBD 2-2009, f.

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10-21-09, cert. ef. 11-1-09; OBD 1-2010, f. 6-22-10, cert. ef. 7-1-10; OBD 3-2011(Temp), f. 6-30-11, cert. ef. 7-1-11 thru 12-27-11; OBD 4-2011, f. & cert. ef. 11-15-11; OBD 1-2014, f. 7-2-14, cert. ef. 8-1-14

## 818-026-0050

### Minimal Sedation Permit

Minimal sedation and nitrous oxide sedation.

(1) The Board shall issue a Minimal Sedation Permit to an applicant who:

- (a) Is a licensed dentist in Oregon;
- (b) Holds a valid and current Health Care Provider BLS/CPR level certificate, or its equivalent; and
- (c) Completion of a comprehensive training program consisting of at least 16 hours of training and satisfies the requirements of the ADA Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students (2007) at the time training was commenced or postgraduate instruction was completed, or the equivalent of that required in graduate training programs, in sedation, recognition and management of complications and emergency care; or

(d) In lieu of these requirements, the Board may accept equivalent training or experience in minimal sedation anesthesia.

(2) The following facilities, equipment and drugs shall be on site and available for immediate use during the procedures and during recovery:

(a) An operating room large enough to adequately accommodate the patient on an operating table or in an operating chair and to allow an operating team of at least two individuals to freely move about the patient;

(b) An operating table or chair which permits the patient to be positioned so the operating team can maintain the patient's airway, quickly alter the patient's position in an emergency, and provide a firm platform for the administration of basic life support;

(c) A lighting system which permits evaluation of the patient's skin and mucosal color and a backup lighting system of sufficient intensity to permit completion of any operation underway in the event of a general power failure;

(d) Suction equipment which permits aspiration of the oral and pharyngeal cavities and a backup suction device which will function in the event of a general power failure;

(e) An oxygen delivery system with adequate full facemask and appropriate connectors that is capable of delivering high flow oxygen to the patient under positive pressure, together with an adequate backup system;

(f) A nitrous oxide delivery system with a fail-safe mechanism that will insure appropriate continuous oxygen delivery and a scavenger system;

(g) Sphygmomanometer, stethoscope, pulse oximeter, and/or automatic blood pressure cuff; and

(h) Emergency drugs including, but not limited to: pharmacologic antagonists appropriate to the drugs used, vasopressors, corticosteroids, bronchodilators, antihistamines, antihypertensives and anticonvulsants.

(3) Before inducing minimal sedation, a dentist who induces minimal sedation shall:

(a) Evaluate the patient;

(b) Give written preoperative and postoperative instructions to the patient or, when appropriate due to age or psychological status of the patient, the patient's guardian;

(c) Certify that the patient is an appropriate candidate for minimal sedation; and

(d) Obtain written informed consent from the patient or patient's guardian for the anesthesia. The obtaining of the informed consent shall be documented in the patient's record.

(4) No permit holder shall have more than one person under minimal sedation at the same time.

(5) While the patient is being treated under minimal sedation, an anesthesia monitor shall be present in the room in addition to the treatment provider. The anesthesia monitor may be the dental assistant.

(a) After training, a dental assistant, when directed by a dentist, may administer oral sedative agents or anxiolysis agents calculated and dispensed by a dentist under the direct supervision of a dentist.

(6) A patient under minimal sedation shall be visually monitored at all times, including recovery phase. The dentist or anesthesia monitor shall monitor and record the patient's condition.

(7) The patient shall be monitored as follows:

(a) Patients must have continuous monitoring using pulse oximetry. The patient's blood pressure, heart rate, and respiration shall be taken if they can reasonably be obtained. If the information cannot be obtained, the reasons shall be documented in the patient's record. The record must also include documentation of all medications administered with dosages, time intervals and route of administration.

(b) A discharge entry shall be made by the dentist in the patient's record indicating the patient's condition upon discharge and the name of the responsible party to whom the patient was discharged.

(8) The dentist shall assess the patient's responsiveness using preoperative values as normal guidelines and discharge the patient only when the following criteria are met:

(a) Vital signs including blood pressure, pulse rate and respiratory rate are stable;

(b) The patient is alert and oriented to person, place and time as appropriate to age and preoperative psychological status;

(c) The patient can talk and respond coherently to verbal questioning;

(d) The patient can sit up unaided;

(e) The patient can ambulate with minimal assistance; and

(f) The patient does not have uncontrollable nausea or vomiting and has minimal dizziness.

(g) A dentist shall not release a patient who has undergone minimal sedation except to the care of a responsible third party.

(9) Permit renewal. In order to renew a Minimal Sedation Permit, the permit holder must provide documentation of having a current Health Care Provider BLS/CPR level certificate, or its equivalent. In addition, Minimal Sedation Permit holders must also complete four (4) hours of continuing education in one or more of the following areas every two years: sedation, physical evaluation, medical emergencies, monitoring and the use of monitoring equipment, or pharmacology of drugs and agents used in sedation. Training taken to maintain current Health Care Provider BLS/CPR level certification, or its equivalent, may not be counted toward this requirement. Continuing education hours may be counted toward fulfilling the continuing education requirement set forth in OAR 818-021-0060.

Stat. Auth.: ORS 679

Stats. Implemented: ORS 679.250(7) & 679.250(10)

Hist.: OBD 6-1999, f. 6-25-99, cert. ef. 7-1-99; Administrative correction 8-12-99; OBD 3-2003, f. 9-15-03, cert. ef. 10-1-03; OBD 1-2005, f. 1-28-05, cert. ef. 2-1-05; OBD 2-2005, f. 1-31-05, cert. ef. 2-1-05; OBD 1-2010, f. 6-22-10, cert. ef. 7-1-10; OBD 1-2014, f. 7-2-14, cert. ef. 8-1-14

## 818-026-0055

### Dental Hygiene and Dental Assistant Procedures Performed Under Nitrous Oxide or Minimal Sedation

(1) Under indirect supervision, dental hygiene procedures may be performed for a patient who is under nitrous oxide or minimal sedation under the following conditions:

(a) A licensee holding a Nitrous Oxide, Minimal, Moderate, Deep Sedation or General Anesthesia Permit administers the sedative agents;

(b) The permit holder, or an anesthesia monitor, monitors the patient;

or

(c) if a dental hygienist with a nitrous oxide permit administers nitrous oxide sedation to a patient and then performs authorized procedures on the patient, an anesthesia monitor is not required to be present during the time the patient is sedated unless the permit holder leaves the patient.

(d) The permit holder performs the appropriate pre- and post-operative evaluation and discharges the patient in accordance with 818-026-0050(7) and (8).

(2) Under direct supervision, a dental assistant may perform those procedures for which the dental assistant holds the appropriate certification for a patient who is under nitrous oxide or minimal sedation under the following conditions:

(a) A licensee holding the Nitrous Oxide, Minimal, Moderate, Deep Sedation or General Anesthesia Permit administers the sedative agents;

(b) The permit holder, or an anesthesia monitor, monitors the patient; and

(c) The permit holder performs the appropriate pre- and post-operative evaluation and discharges the patient in accordance with 818-026-0050(7) and (8).

Stat. Auth.: ORS 679 & 680

Stats. Implemented: ORS 679.250(7) & 679.250(10)

Hist.: OBD 3-2003, f. 9-15-03, cert. ef. 10-1-03; OBD 1-2005, f. 1-28-05, cert. ef. 2-1-05; OBD 1-2010, f. 6-22-10, cert. ef. 7-1-10; OBD 2-2012, f. 6-14-12, cert. ef. 7-1-12; OBD 1-2014, f. 7-2-14, cert. ef. 8-1-14

## 818-026-0060

### Moderate Sedation Permit

Moderate sedation, minimal sedation, and nitrous oxide sedation.

(1) The Board shall issue or renew a Moderate Sedation Permit to an applicant who:

(a) Is a licensed dentist in Oregon;

(b) Either holds a current Advanced Cardiac Life Support (ACLS) or Pediatric Advanced Life Support (PALS) certificate, whichever is appropriate for the patient being sedated, or successfully completes the American

# ADMINISTRATIVE RULES

Dental Association's course "Recognition and Management of Complications during Minimal and Moderate Sedation" at least every two years; and

(c) Satisfies one of the following criteria:

(A) Completion of a comprehensive training program in enteral and/or parenteral sedation that satisfies the requirements described in Part V of the ADA Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students (2007) at the time training was commenced.

(i) Enteral Moderate Sedation requires a minimum of 24 hours of instruction plus management of at least 10 dental patient experiences by the enteral and/or enteral-nitrous oxide/oxygen route.

(ii) Parenteral Moderate Sedation requires a minimum of 60 hours of instruction plus management of at least 20 dental patients by the intravenous route.

(B) Completion of an ADA accredited postdoctoral training program (e.g., general practice residency) which affords comprehensive and appropriate training necessary to administer and manage parenteral sedation, commensurate with these Guidelines.

(C) In lieu of these requirements, the Board may accept equivalent training or experience in moderate sedation anesthesia.

(2) The following facilities, equipment and drugs shall be on site and available for immediate use during the procedures and during recovery:

(a) An operating room large enough to adequately accommodate the patient on an operating table or in an operating chair and to allow an operating team of at least two individuals to freely move about the patient;

(b) An operating table or chair which permits the patient to be positioned so the operating team can maintain the patient's airway, quickly alter the patient's position in an emergency, and provide a firm platform for the administration of basic life support;

(c) A lighting system which permits evaluation of the patient's skin and mucosal color and a backup lighting system of sufficient intensity to permit completion of any operation underway in the event of a general power failure;

(d) Suction equipment which permits aspiration of the oral and pharyngeal cavities and a backup suction device which will function in the event of a general power failure;

(e) An oxygen delivery system with adequate full face mask and appropriate connectors that is capable of delivering high flow oxygen to the patient under positive pressure, together with an adequate backup system;

(f) A nitrous oxide delivery system with a fail-safe mechanism that will insure appropriate continuous oxygen delivery and a scavenger system;

(g) A recovery area that has available oxygen, adequate lighting, suction and electrical outlets. The recovery area can be the operating room;

(h) Sphygmomanometer, precordial/pretracheal stethoscope, capnograph, pulse oximeter, oral and nasopharyngeal airways, laryngeal mask airways, intravenous fluid administration equipment, automated external defibrillator (AED); and

(i) Emergency drugs including, but not limited to: pharmacologic antagonists appropriate to the drugs used, vasopressors, corticosteroids, bronchodilators, antihistamines, antihypertensives and anticonvulsants.

(3) No permit holder shall have more than one person under moderate sedation, minimal sedation, or nitrous oxide sedation at the same time.

(4) During the administration of moderate sedation, and at all times while the patient is under moderate sedation, an anesthesia monitor, and one other person holding a Health Care Provider BLS/CPR level certificate or its equivalent, shall be present in the operatory, in addition to the dentist performing the dental procedures.

(5) Before inducing moderate sedation, a dentist who induces moderate sedation shall:

(a) Evaluate the patient and document, using the American Society of Anesthesiologists Patient Physical Status Classifications, that the patient is an appropriate candidate for moderate sedation;

(b) Give written preoperative and postoperative instructions to the patient or, when appropriate due to age or psychological status of the patient, the patient's guardian; and

(c) Obtain written informed consent from the patient or patient's guardian for the anesthesia.

(6) A patient under moderate sedation shall be visually monitored at all times, including the recovery phase. The dentist or anesthesia monitor shall monitor and record the patient's condition.

(7) The patient shall be monitored as follows:

(a) Patients must have continuous monitoring using pulse oximetry and End-tidal CO<sub>2</sub> monitors. The patient's blood pressure, heart rate, and respiration shall be recorded at regular intervals but at least every 15 minutes, and these recordings shall be documented in the patient record. The

record must also include documentation of preoperative and postoperative vital signs, all medications administered with dosages, time intervals and route of administration. If this information cannot be obtained, the reasons shall be documented in the patient's record. A patient under moderate sedation shall be continuously monitored;

(b) During the recovery phase, the patient must be monitored by an individual trained to monitor patients recovering from moderate sedation.

(8) A dentist shall not release a patient who has undergone moderate sedation except to the care of a responsible third party.

(9) The dentist shall assess the patient's responsiveness using preoperative values as normal guidelines and discharge the patient only when the following criteria are met:

(a) Vital signs including blood pressure, pulse rate and respiratory rate are stable;

(b) The patient is alert and oriented to person, place and time as appropriate to age and preoperative psychological status;

(c) The patient can talk and respond coherently to verbal questioning;

(d) The patient can sit up unaided;

(e) The patient can ambulate with minimal assistance; and

(f) The patient does not have uncontrollable nausea or vomiting and has minimal dizziness.

(10) A discharge entry shall be made by the dentist in the patient's record indicating the patient's condition upon discharge and the name of the responsible party to whom the patient was discharged.

(11) After adequate training, an assistant, when directed by a dentist, may dispense oral medications that have been prepared by the dentist permit holder for oral administration to a patient under direct supervision or introduce additional anesthetic agents into an infusion line under the direct visual supervision of a dentist.

(12) Permit renewal. In order to renew a Moderate Sedation Permit, the permit holder must provide documentation of having current ACLS or PALS certification or current certification of successful completion of the American Dental Association's course "Recognition and Management of Complications during Minimal and Moderate Sedation" and must complete 14 hours of continuing education in one or more of the following areas every two years: sedation, physical evaluation, medical emergencies, monitoring and the use of monitoring equipment, or pharmacology of drugs and agents used in sedation. Training taken to maintain current ACLS or PALS certification or successful completion of the American Dental Association's course "Recognition and Management of Complications during Minimal and Moderate Sedation" may be counted toward this requirement. Continuing education hours may be counted toward fulfilling the continuing education requirement set forth in OAR 818-021-0060.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 679

Stats. Implemented: ORS 679.250(7) & 679.250(10)

Hist.: OBD 2-1998, f. 7-13-98, cert. ef. 10-1-98; OBD 1-1999, f. 2-26-99, cert. ef. 3-1-99; OBD 6-1999, f. 6-25-99, cert. ef. 7-1-99; Administrative correction 8-12-99; OBD 2-2000(Temp), f. 5-22-00, cert. ef. 5-22-00 thru 11-18-00; OBD 2-2001, f. & cert. ef. 1-8-01; OBD 3-2003, f. 9-15-03, cert. ef. 10-1-03; OBD 1-2005, f. 1-28-05, cert. ef. 2-1-05; OBD 2-2005, f. 1-31-05, cert. ef. 2-1-05; OBD 1-2010, f. 6-22-10, cert. ef. 7-1-10; OBD 2-2011(Temp), f. 5-9-11, cert. ef. 6-1-11 thru 1-27-11; OBD 4-2011, f. & cert. ef. 11-15-11; OBD 1-2013, f. 5-15-13, cert. ef. 7-1-13; OBD 3-2013, f. 10-24-13, cert. ef. 1-1-14; OBD 1-2014, f. 7-2-14, cert. ef. 8-1-14

## 818-026-0065

### Deep Sedation

Deep sedation, moderate sedation, minimal sedation, and nitrous oxide sedation.

(1) The Board shall issue a Deep Sedation Permit to a licensee who holds a Class 3 Permit on or before July 1, 2010 who:

(a) Is a licensed dentist in Oregon; and

(b) Holds a current Advanced Cardiac Life Support (ACLS) or Pediatric Advanced Life Support (PALS) certificate, whichever is appropriate for the patient being sedated.

(2) The following facilities, equipment and drugs shall be on site and available for immediate use during the procedures and during recovery:

(a) An operating room large enough to adequately accommodate the patient on an operating table or in an operating chair and to allow an operating team of at least two individuals to freely move about the patient;

(b) An operating table or chair which permits the patient to be positioned so the operating team can maintain the patient's airway, quickly alter the patient's position in an emergency, and provide a firm platform for the administration of basic life support;

(c) A lighting system which permits evaluation of the patient's skin and mucosal color and a backup lighting system of sufficient intensity to permit completion of any operation underway in the event of a general power failure;

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(d) Suction equipment which permits aspiration of the oral and pharyngeal cavities and a backup suction device which will function in the event of a general power failure;

(e) An oxygen delivery system with adequate full face mask and appropriate connectors that is capable of delivering high flow oxygen to the patient under positive pressure, together with an adequate backup system;

(f) A nitrous oxide delivery system with a fail-safe mechanism that will insure appropriate continuous oxygen delivery and a scavenger system;

(g) A recovery area that has available oxygen, adequate lighting, suction and electrical outlets. The recovery area can be the operating room;

(h) Sphygmomanometer, precordial/pretracheal stethoscope, capnograph, pulse oximeter, electrocardiograph monitor (ECG), automated external defibrillator (AED), oral and nasopharyngeal airways, laryngeal mask airways, intravenous fluid administration equipment; and

(i) Emergency drugs including, but not limited to: pharmacologic antagonists appropriate to the drugs used, vasopressors, corticosteroids, bronchodilators, antihistamines, antihypertensives and anticonvulsants.

(3) No permit holder shall have more than one person under deep sedation, moderate sedation, minimal sedation, or nitrous oxide sedation at the same time.

(4) During the administration of deep sedation, and at all times while the patient is under deep sedation, an anesthesia monitor, and one other person holding a Health Care Provider BLS/CPR level certificate or its equivalent, shall be present in the operatory, in addition to the dentist performing the dental procedures.

(5) Before inducing deep sedation, a dentist who induces deep sedation shall:

(a) Evaluate the patient and document, using the American Society of Anesthesiologists Patient Physical Status Classifications, that the patient is an appropriate candidate for deep sedation;

(b) Give written preoperative and postoperative instructions to the patient or, when appropriate due to age or psychological status of the patient, the patient's guardian; and

(c) Obtain written informed consent from the patient or patient's guardian for the anesthesia.

(6) A patient under deep sedation shall be visually monitored at all times, including the recovery phase. The dentist or anesthesia monitor shall monitor and record the patient's condition.

(7) The patient shall be monitored as follows:

(a) Patients must have continuous monitoring using pulse oximetry, electrocardiograph monitors (ECG) and End-tidal CO<sub>2</sub> monitors. The patient's heart rhythm shall be continuously monitored and the patient's blood pressure, heart rate, and respiration shall be recorded at regular intervals but at least every 5 minutes, and these recordings shall be documented in the patient record. The record must also include documentation of preoperative and postoperative vital signs, all medications administered with dosages, time intervals and route of administration. If this information cannot be obtained, the reasons shall be documented in the patient's record. A patient under deep sedation shall be continuously monitored;

(b) Once sedated, a patient shall remain in the operatory for the duration of treatment until criteria for transportation to recovery have been met.

(c) During the recovery phase, the patient must be monitored by an individual trained to monitor patients recovering from deep sedation.

(8) A dentist shall not release a patient who has undergone deep sedation except to the care of a responsible third party.

(9) The dentist shall assess the patient's responsiveness using preoperative values as normal guidelines and discharge the patient only when the following criteria are met:

(a) Vital signs including blood pressure, pulse rate and respiratory rate are stable;

(b) The patient is alert and oriented to person, place and time as appropriate to age and preoperative psychological status;

(c) The patient can talk and respond coherently to verbal questioning;

(d) The patient can sit up unaided;

(e) The patient can ambulate with minimal assistance; and

(f) The patient does not have uncontrollable nausea or vomiting and has minimal dizziness.

(10) A discharge entry shall be made by the dentist in the patient's record indicating the patient's condition upon discharge and the name of the responsible party to whom the patient was discharged.

(11) After adequate training, an assistant, when directed by a dentist, may administer oral sedative agents calculated by a dentist or introduce additional anesthetic agents into an infusion line under the direct visual supervision of a dentist.

(12) Permit renewal. In order to renew a Deep Sedation Permit, the permit holder must provide documentation of having current ACLS or PALS certification and must complete 14 hours of continuing education in one or more of the following areas every two years: sedation, physical evaluation, medical emergencies, monitoring and the use of monitoring equipment, or pharmacology of drugs and agents used in sedation. Training taken to maintain current ACLS or PALS certification may be counted toward this requirement. Continuing education hours may be counted toward fulfilling the continuing education requirement set forth in OAR 818-021-0060.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 679

Stats. Implemented: ORS 679.250(7) & 679.250(10)

Hist.: OBD 1-2010, f. 6-22-10, cert. ef. 7-1-10; OBD 2-2011(Temp), f. 5-9-11, cert. ef. 6-1-11 thru 1-27-11; OBD 4-2011, f. & cert. ef. 11-15-11; OBD 1-2013, f. 5-15-13, cert. ef. 7-1-13; OBD 1-2014, f. 7-2-14, cert. ef. 8-1-14

## 818-026-0070

### General Anesthesia Permit

General anesthesia, deep sedation, moderate sedation, minimal sedation and nitrous oxide sedation.

(1) The Board shall issue a General Anesthesia Permit to an applicant who:

(a) Is a licensed dentist in Oregon;

(b) Holds a current Advanced Cardiac Life Support (ACLS) Certificate or Pediatric Advanced Life Support (PALS) Certificate, whichever is appropriate for the patient being sedated; and

(c) Satisfies one of the following criteria:

(A) Completion of an advanced training program in anesthesia and related subjects beyond the undergraduate dental curriculum that satisfies the requirements described in the ADA Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students (2007) consisting of a minimum of 2 years of a postgraduate anesthesia residency at the time training was commenced.

(B) Completion of any ADA accredited postdoctoral training program, including but not limited to Oral and Maxillofacial Surgery, which affords comprehensive and appropriate training necessary to administer and manage general anesthesia, commensurate with these Guidelines.

(C) In lieu of these requirements, the Board may accept equivalent training or experience in general anesthesia.

(2) The following facilities, equipment and drugs shall be on site and available for immediate use during the procedure and during recovery:

(a) An operating room large enough to adequately accommodate the patient on an operating table or in an operating chair and to allow an operating team of at least three individuals to freely move about the patient;

(b) An operating table or chair which permits the patient to be positioned so the operating team can maintain the patient's airway, quickly alter the patient's position in an emergency, and provide a firm platform for the administration of basic life support;

(c) A lighting system which permits evaluation of the patient's skin and mucosal color and a backup lighting system of sufficient intensity to permit completion of any operation underway in the event of a general power failure;

(d) Suction equipment which permits aspiration of the oral and pharyngeal cavities and a backup suction device which will function in the event of a general power failure;

(e) An oxygen delivery system with adequate full face mask and appropriate connectors that is capable of delivering high flow oxygen to the patient under positive pressure, together with an adequate backup system;

(f) A nitrous oxide delivery system with a fail-safe mechanism that will insure appropriate continuous oxygen delivery and a scavenger system;

(g) A recovery area that has available oxygen, adequate lighting, suction and electrical outlets. The recovery area can be the operating room;

(h) Sphygmomanometer, precordial/pretracheal stethoscope, capnograph, pulse oximeter, electrocardiograph monitor (ECG), automated external defibrillator (AED), oral and nasopharyngeal airways, laryngeal mask airways, intravenous fluid administration equipment; and

(i) Emergency drugs including, but not limited to: pharmacologic antagonists appropriate to the drugs used, vasopressors, corticosteroids, bronchodilators, intravenous medications for treatment of cardiac arrest, narcotic antagonist, antihistaminic, antiarrhythmics, antihypertensives and anticonvulsants.

(3) No permit holder shall have more than one person under general anesthesia, deep sedation, moderate sedation, minimal sedation or nitrous oxide sedation at the same time.

(4) During the administration of deep sedation or general anesthesia, and at all times while the patient is under deep sedation or general anesthesia, an anesthesia monitor and one other person holding a Health Care

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Provider BLS/CPR level certificate, or its equivalent, shall be present in the operatory in addition to the dentist performing the dental procedures.

(5) Before inducing deep sedation or general anesthesia the dentist who induces deep sedation or general anesthesia shall:

(a) Evaluate the patient and document, using the American Society of Anesthesiologists Patient Physical Status Classifications, that the patient is an appropriate candidate for general anesthesia or deep sedation;

(b) Give written preoperative and postoperative instructions to the patient or, when appropriate due to age or psychological status of the patient, the patient's guardian; and

(c) Obtain written informed consent from the patient or patient's guardian for the anesthesia.

(6) A patient under deep sedation or general anesthesia shall be visually monitored at all times, including recovery phase. A dentist who induces deep sedation or general anesthesia or anesthesia monitor trained in monitoring patients under deep sedation or general anesthesia shall monitor and record the patient's condition on a contemporaneous record.

(7) The patient shall be monitored as follows:

(a) Patients must have continuous monitoring of their heart rate, heart rhythm, oxygen saturation levels and respiration using pulse oximetry, electrocardiograph monitors (ECG) and End-tidal CO<sub>2</sub> monitors. The patient's blood pressure, heart rate and oxygen saturation shall be assessed every five minutes, and shall be contemporaneously documented in the patient record. The record must also include documentation of preoperative and postoperative vital signs, all medications administered with dosages, time intervals and route of administration. The person administering the anesthesia and the person monitoring the patient may not leave the patient while the patient is under deep sedation or general anesthesia;

(b) Once sedated, a patient shall remain in the operatory for the duration of treatment until criteria for transportation to recovery have been met.

(c) During the recovery phase, the patient must be monitored, including the use of pulse oximetry, by an individual trained to monitor patients recovering from general anesthesia.

(8) A dentist shall not release a patient who has undergone deep sedation or general anesthesia except to the care of a responsible third party.

(9) The dentist shall assess the patient's responsiveness using preoperative values as normal guidelines and discharge the patient only when the following criteria are met:

(a) Vital signs including blood pressure, pulse rate and respiratory rate are stable;

(b) The patient is alert and oriented to person, place and time as appropriate to age and preoperative psychological status;

(c) The patient can talk and respond coherently to verbal questioning;

(d) The patient can sit up unaided;

(e) The patient can ambulate with minimal assistance; and

(f) The patient does not have nausea or vomiting and has minimal dizziness.

(10) A discharge entry shall be made in the patient's record by the dentist indicating the patient's condition upon discharge and the name of the responsible party to whom the patient was discharged.

(11) After adequate training, an assistant, when directed by a dentist, may introduce additional anesthetic agents to an infusion line under the direct visual supervision of a dentist.

(12) Permit renewal. In order to renew a General Anesthesia Permit, the permit holder must provide documentation of having current ACLS or PALS certification and complete 14 hours of continuing education in one or more of the following areas every two years: deep sedation and/or general anesthesia, physical evaluation, medical emergencies, monitoring and the use of monitoring equipment, pharmacology of drugs and agents used in anesthesia. Training taken to maintain current ACLS or PALS certification may be counted toward this requirement. Continuing education hours may be counted toward fulfilling the continuing education requirement set forth in OAR 818-021-0060.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 679

Stats. Implemented: ORS 679.250(7) & 679.250(10)

Hist.: OBD 2-1998, f. 7-13-98, cert. ef. 10-1-98; OBD 6-1999, f. 6-25-99, cert. ef. 7-1-99; Administrative correction 8-12-99; OBD 2-2000(Temp), f. 5-22-00, cert. ef. 5-22-00 thru 11-18-00; Administrative correction 6-21-01; OBD 3-2003, f. 9-15-03, cert. ef. 10-1-03; OBD 1-2005, f. 1-28-05, cert. ef. 2-1-05; OBD 1-2010, f. 6-22-10, cert. ef. 7-1-10; OBD 2-2011(Temp), f. 5-9-11, cert. ef. 6-1-11 thru 1-27-11; OBD 4-2011, f. & cert. ef. 11-15-11; OBD 1-2013, f. 5-15-13, cert. ef. 7-1-13; OBD 1-2014, f. 7-2-14, cert. ef. 8-1-14

## 818-035-0025

### Prohibitions

A dental hygienist may not:

(1) Diagnose and treatment plan other than for dental hygiene services;

(2) Cut hard or soft tissue with the exception of root planing;

(3) Extract any tooth;

(4) Fit or adjust any correctional or prosthetic appliance except as provided by OAR 818-035-0030(1)(h);

(5) Administer or dispense any drugs except as provided by OAR 818-035-0030, 818-035-0040, 818-026-0060(11) and 818-026-0070(11);

(6) Place, condense, carve or cement permanent restorations except as provided in OAR 818-035-0072, or operatively prepare teeth;

(7) Irrigate or medicate canals; try in cones, or ream, file or fill canals;

(8) Use the behavior management techniques of Hand Over Mouth (HOM) or Hand Over Mouth Airway Restriction (HOMAR) on any patient.

(9) Place or remove healing caps or healing abutments, except under direct supervision.

(10) Place implant impression copings, except under direct supervision.

Stat. Auth.: ORS 679 & 680

Stats. Implemented: ORS 679.020(1)

Hist.: DE 2-1992, f. & cert. ef. 6-24-92; DE 2-1997, f. & cert. ef. 2-20-97; OBD 7-1999, f. 6-25-99, cert. ef. 7-1-99; OBD 2-2000(Temp), f. 5-22-00, cert. ef. 5-22-00 thru 11-18-00; OBD 2-2001, f. & cert. ef. 1-8-01; OBD 15-2001, f. 12-7-01, cert. ef. 1-1-02; OBD 2-2005, f. 1-31-05, cert. ef. 2-1-05; OBD 2-2007, f. 4-26-07, cert. ef. 5-1-07; OBD 1-2008, f. 11-10-08, cert. ef. 12-1-08; OBD 4-2011, f. & cert. ef. 11-15-11; OBD 1-2014, f. 7-2-14, cert. ef. 8-1-14

## 818-035-0030

### Additional Functions of Dental Hygienists

(1) In addition to functions set forth in ORS 679.010, a dental hygienist may perform the following functions under the general supervision of a licensed dentist:

(a) Make preliminary intra-oral and extra-oral examinations and record findings;

(b) Place periodontal dressings;

(c) Remove periodontal dressings or direct a dental assistant to remove periodontal dressings;

(d) Perform all functions delegable to dental assistants and expanded function dental assistants providing that the dental hygienist is appropriately trained;

(e) Administer and dispense antimicrobial solutions or other antimicrobial agents in the performance of dental hygiene functions.

(f) Administer and dispense fluoride, fluoride varnish, antimicrobial solutions for mouth rinsing or other non-systemic antimicrobial agents.

(g) Use high-speed handpieces to polish restorations and to remove cement and adhesive material.

(h) Apply temporary soft relines to complete dentures for the purpose of tissue conditioning.

(i) Perform all aspects of teeth whitening procedures.

(2) A dental hygienist may perform the following functions at the locations and for the persons described in ORS 680.205(1) and (2) without the supervision of a dentist:

(a) Determine the need for and appropriateness of sealants or fluoride; and

(b) Apply sealants or fluoride.

Stat. Auth.: ORS 679 & 680

Stats. Implemented: ORS 679.025(2)(j)

Hist.: DE 5-1984, f. & ef. 5-17-84; DE 3-1986, f. & ef. 3-31-86; DE 2-1992, f. & cert. ef. 6-24-92; OBD 7-1999, f. 6-25-99, cert. ef. 7-1-99; OBD 1-2001, f. & cert. ef. 1-8-01; OBD 15-2001, f. 12-7-01, cert. ef. 1-1-02; OBD 1-2004, f. 5-27-04, cert. ef. 6-1-04; OBD 2-2005, f. 1-31-05, cert. ef. 2-1-05; OBD 3-2007, f. & cert. ef. 11-30-07; OBD 1-2008, f. 11-10-08, cert. ef. 12-1-08; OBD 2-2009, f. 10-21-09, cert. ef. 11-1-09; OBD 1-2014, f. 7-2-14, cert. ef. 8-1-14

## 818-035-0040

### Expanded Functions of Dental Hygienists

(1) Upon completion of a course of instruction in a program accredited by the Commission on Dental Accreditation of the American Dental Association or other course of instruction approved by the Board, a dental hygienist who completes a Board approved application shall be issued an endorsement to administer local anesthetic agents and local anesthetic reversal agents under the general supervision of a licensed dentist. Local anesthetic reversal agents shall not be used on children less than 6 years of age or weighing less than 33 pounds.

(2) Upon completion of a course of instruction in a program accredited by the Commission on Dental Accreditation of the American Dental Association or other course of instruction approved by the Board, a dental hygienist may administer nitrous oxide under the indirect supervision of a licensed dentist in accordance with the Board's rules regarding anesthesia.

Stat. Auth.: ORS 679 & 680

Stats. Implemented: ORS 679.025(2)(j) & 679.250(7)

Hist.: DE 5-1984, f. & ef. 5-17-84; DE 3-1986, f. & ef. 3-31-86; DE 2-1992, f. & cert. ef. 6-24-92; OBD 3-1998, f. & cert. ef. 7-13-98; OBD 7-1999, f. 6-25-99, cert. ef. 7-1-99; OBD

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8-1999, f. 8-10-99, cert. ef. 1-1-00; OBD 15-2001, f. 12-7-01, cert. ef. 1-1-02; OBD 2-2007, f. 4-26-07, cert. ef. 5-1-07; OBD 3-2007, f. & cert. ef. 11-30-07; OBD 1-2008, f. 11-10-08, cert. ef. 12-1-08; OBD 1-2014, f. 7-2-14, cert. ef. 8-1-14

## 818-042-0040

### Prohibited Acts

No licensee may authorize any dental assistant to perform the following acts:

- (1) Diagnose or plan treatment.
  - (2) Cut hard or soft tissue.
  - (3) Any Expanded Function duty (818-042-0070 and 818-042-0090) or Expanded Orthodontic Function duty (818-042-0100) without holding the appropriate certification.
  - (4) Correct or attempt to correct the malposition or malocclusion of teeth except as provided by OAR 818-042-0100.
  - (5) Adjust or attempt to adjust any orthodontic wire, fixed or removable appliance or other structure while it is in the patient's mouth.
  - (6) Administer or dispense any drug except fluoride, topical anesthetic, desensitizing agents, over the counter medications per package instructions or drugs administered pursuant to OAR 818-026-0030(6), OAR 818-026-0050(5)(a), 818-026-0060(11), 818-026-0065(11), 818-026-0070(11) and as provided in 818-042-0070 and 818-042-0115.
  - (7) Prescribe any drug.
  - (8) Place periodontal packs.
  - (9) Start nitrous oxide.
  - (10) Remove stains or deposits except as provided in OAR 818-042-0070.
  - (11) Use ultrasonic equipment intra-orally except as provided in OAR 818-042-0100.
  - (12) Use a high-speed handpiece or any device that is operated by a high-speed handpiece intra-orally.
  - (13) Use lasers, except laser-curing lights.
  - (14) Use air abrasion or air polishing.
  - (15) Remove teeth or parts of tooth structure.
  - (16) Cement or bond any fixed prosthetic or orthodontic appliance including bands, brackets, retainers, tooth moving devices, or orthopedic appliances except as provided in 818-042-0100.
  - (17) Condense and carve permanent restorative material except as provided in OAR 818-042-0095.
  - (18) Place any type of cord subgingivally.
  - (19) Take jaw registrations or oral impressions for supplying artificial teeth as substitutes for natural teeth, except diagnostic or opposing models or for the fabrication of temporary or provisional restorations or appliances.
  - (20) Apply denture relines except as provided in OAR 818-042-0090(2).
  - (21) Expose radiographs without holding a current Certificate of Radiologic Proficiency issued by the Board (818-042-0050 and 818-042-0060) except while taking a course of instruction approved by the Oregon Health Authority, Oregon Public Health Division, Office of Environmental Public Health, Radiation Protection Services, or the Oregon Board of Dentistry.
  - (22) Use the behavior management techniques known as Hand Over Mouth (HOM) or Hand Over Mouth Airway Restriction (HOMAR) on any patient.
  - (23) Perform periodontal probing.
  - (24) Place or remove healing caps or healing abutments, except under direct supervision.
  - (25) Place implant impression copings, except under direct supervision.
  - (26) Any act in violation of Board statute or rules.
- Stat. Auth.: ORS 679 & 680  
Stats. Implemented: ORS 679.020, 679.025 & 679.250  
Hist.: OBD 9-1999, f. 8-10-99, cert. ef. 1-1-00; OBD 2-2000(Temp), f. 5-22-00, cert. ef. 5-22-00 thru 11-18-00; OBD 1-2001, f. & cert. ef. 1-8-01; OBD 15-2001, f. 12-7-01, cert. ef. 1-1-02; OBD 3-2007, f. & cert. ef. 11-30-07; OBD 1-2010, f. 6-22-10, cert. ef. 7-1-10005, f. 10-26-05, cert. ef. 11-1-05; OBD 3-2007, f. & cert. ef. 11-30-07; OBD 1-2010, f. 6-22-10, cert. ef. 7-1-10; OBD 4-2011, f. & cert. ef. 11-15-11; OBD 2-2012, f. 6-14-12, cert. ef. 7-1-12; OBD 1-2014, f. 7-2-14, cert. ef. 8-1-14

## 818-042-0050

### Taking of X-Rays — Exposing of Radiographs

- (1) A dentist may authorize the following persons to place films, adjust equipment preparatory to exposing films, and expose the films under general supervision:
  - (a) A dental assistant certified by the Board in radiologic proficiency; or
  - (b) A radiologic technologist licensed by the Oregon Board of Medical Imaging and certified by the Oregon Board of Dentistry (OBD)

who has completed ten (10) clock hours in a Board approved dental radiology course and submitted a satisfactory full mouth series of radiographs to the OBD.

- (2) A dentist may authorize a dental assistant who has completed a course of instruction approved by the Oregon Board of Dentistry, and who has passed the written Dental Radiation Health and Safety Examination administered by the Dental Assisting National Board, or comparable exam administered by any other testing entity authorized by the Board, or other comparable requirements approved by the Oregon Board of Dentistry to place films, adjust equipment preparatory to exposing films, and expose the films under the indirect supervision of a dentist, dental hygienist, or dental assistant who holds an Oregon Radiologic Proficiency Certificate. The dental assistant must successfully complete the clinical examination within six months of the dentist authorizing the assistant to take radiographs.

Stat. Auth.: ORS 679

Stats. Implemented: ORS 679.025(2)(j) & 679.250(7)

Hist.: OBD 9-1999, f. 8-10-99, cert. ef. 1-1-00; OBD 2-2003, f. 7-14-03 cert. ef. 7-18-03; OBD 4-2004, f. 11-23-04 cert. ef. 12-1-04; OBD 3-2005, f. 10-26-05, cert. ef. 11-1-05; OBD 3-2007, f. & cert. ef. 11-30-07; OBD 4-2011, f. & cert. ef. 11-15-11; OBD 1-2014, f. 7-2-14, cert. ef. 8-1-14

## 818-042-0060

### Certification — Radiologic Proficiency

- (1) The Board may certify a dental assistant in radiologic proficiency by credential in accordance with OAR 818-042-0120, or if the assistant:

- (2) Submits an application on a form approved by the Board, pays the application fee and:

- (a) Completes a course of instruction approved by the Oregon Board of Dentistry, in accordance with OAR 333-106-0055 or submits evidence that the Oregon Health Authority, Center for Health Protection, Radiation Protection Services recognizes that the equivalent training has been successfully completed;

- (b) Passes the written Dental Radiation Health and Safety Examination administered by the Dental Assisting National Board, Inc. (DANB), or comparable exam administered by any other testing entity authorized by the Board, or other comparable requirements approved by the Oregon Board of Dentistry; and

- (c) Passes a clinical examination approved by the Board and graded by the Dental Assisting National Board, Inc. (DANB), or any other testing entity authorized by the Board, consisting of exposing, developing and mounting a full mouth series of radiographs or by exposing and mounting a digital full mouth series of radiographic images (14 to 18 periapical and 4 bitewing radiographic images) within one hour and under the supervision of a person permitted to take radiographs in Oregon. No portion of the clinical examination may be completed in advance; a maximum of three retakes is permitted (i.e., three individual radiographic exposures, not three full mouth series); only the applicant may determine the necessity of retakes. The radiographic images should be acquired on an adult patient with at least 24 fully erupted teeth. The full mouth series must be submitted for grading within six months after it is taken.

Stat. Auth.: ORS 679

Stats. Implemented: ORS 679.020, 679.025 & 679.250

Hist.: OBD 9-1999, f. 8-10-99, cert. ef. 1-1-00; OBD 2-2003, f. 7-14-03 cert. ef. 7-18-03; OBD 4-2004, f. 11-23-04 cert. ef. 12-1-04; OBD 3-2005, f. 10-26-05, cert. ef. 11-1-05; OBD 3-2007, f. & cert. ef. 11-30-07; OBD 4-2011, f. & cert. ef. 11-15-11; OBD 3-2013, f. 10-24-13, cert. ef. 1-1-14; OBD 1-2014, f. 7-2-14, cert. ef. 8-1-14

## 818-042-0090

### Additional Functions of EFDAs

Upon successful completion of a course of instruction in a program accredited by the Commission on Dental Accreditation of the American Dental Association, or other course of instruction approved by the Board, a certified Expanded Function Dental Assistant may perform the following functions under the indirect supervision of a dentist or dental hygienist providing that the procedure is checked by the dentist or dental hygienist prior to the patient being dismissed:

- (1) Apply pit and fissure sealants provided the patient is examined before the sealants are placed. The sealants must be placed within 45 days of the procedure being authorized by a dentist or dental hygienist.

- (2) Apply temporary soft relines to complete dentures for the purpose of tissue conditioning.

Stat. Auth.: ORS 679

Stats. Implemented: ORS 679.025(2)(j) & 679.250(7)

Hist.: OBD 9-1999, f. 8-10-99, cert. ef. 1-1-00; OBD 15-2001, f. 12-7-01, cert. ef. 1-1-02; OBD 1-2013, f. 5-15-13, cert. ef. 7-1-13; OBD 1-2014, f. 7-2-14, cert. ef. 8-1-14

# ADMINISTRATIVE RULES

## 818-042-0120

### Certification by Credential

(1) Dental Assistants who wish to be certified by the Board in Radiologic Proficiency or as Expanded Function Dental Assistants, or as Expanded Function Orthodontic Dental Assistants shall:

(a) Be certified by another state in the functions for which application is made. The training and certification requirements of the state in which the dental assistant is certified must be substantially similar to Oregon's requirements; or

(b) Have worked for at least 1,000 hours in the past two years in a dental office where such employment involved to a significant extent the functions for which certification is sought; and

(c) Shall be evaluated by a licensed dentist, using a Board approved checklist, to assure that the assistant is competent in the expanded functions.

(2) Applicants applying for certification by credential in Radiologic Proficiency must obtain certification from the Oregon Health Authority, Center for Health Protection, Radiation Protection Services, of having successfully completed training equivalent to that required by OAR 333-106-0055 or approved by the Oregon Board of Dentistry.

Stat. Auth.: ORS 679

Stats. Implemented: ORS 679.020, 679.025 & 679.250

Hist.: OBD 9-1999, f. 8-10-99, cert. ef. 1-1-00; OBD 2-2003, f. 7-14-03 cert. ef. 7-18-03; OBD 4-2004, f. 11-23-04 cert. ef. 12-1-04; OBD 3-2005, f. 10-26-05, cert. ef. 11-1-05; OBD 4-2011, f. & cert. ef. 11-15-11; OBD 1-2014, f. 7-2-14, cert. ef. 8-1-14

## 818-042-0130

### Application for Certification by Credential

An applicant for certification by credential shall submit to the Board:

(1) An application form approved by the Board, with the appropriate fee;

(2) Proof of certification by another state and any other recognized certifications (such as CDA or COA certification) and a description of the examination and training required by the state in which the assistant is certified submitted from the state directly to the Board; or

(3) Certification that the assistant has been employed for at least 1,000 hours in the past two years as a dental assistant performing the functions for which certification is being sought.

(4) If applying for certification by credential as an EFDA or EFODA, certification by a licensed dentist that the applicant is competent to perform the functions for which certification is sought; and

(5) If applying for certification by credential in Radiologic Proficiency, certification from the Oregon Health Authority, Center for Health Protection, Radiation Protection Services, or the Oregon Board of Dentistry, that the applicant has met that agency's training requirements for x-ray machine operators, or other comparable requirements approved by the Oregon Board of Dentistry.

Stat. Auth.: ORS 679

Stats. Implemented: ORS 679.020, 679.025 & 679.250

Hist.: OBD 9-1999, f. 8-10-99, cert. ef. 1-1-00; OBD 2-2003, f. 7-14-03 cert. ef. 7-18-03; OBD 4-2004, f. 11-23-04 cert. ef. 12-1-04; OBD 3-2005, f. 10-26-05, cert. ef. 11-1-05; OBD 4-2011, f. & cert. ef. 11-15-11; OBD 1-2014, f. 7-2-14, cert. ef. 8-1-14

## Oregon Board of Naturopathic Medicine Chapter 850

**Rule Caption:** removes inactive status for natural childbirth certificate holders

**Adm. Order No.:** OBNM 2-2014

**Filed with Sec. of State:** 7-10-2014

**Certified to be Effective:** 7-10-14

**Notice Publication Date:** 5-1-2014

**Rules Amended:** 850-030-0035, 850-035-0230

**Subject:** removes the fee and status (inactive) for natural childbirth certificate holders.

**Rules Coordinator:** Anne Walsh—(971) 673-0193

## 850-030-0035

### Fees for Licensure, Examination and Certification

(1) Fees schedule:

(a) The fee to apply to take the jurisprudence and formulary examinations to be eligible for licensure shall be \$150.

(b) Effective January 1, 2012, the fee for an initial license to practice naturopathic medicine (including reciprocity) shall be \$300 and pro-rated according to receipt of application:

(A) If the application for initial licensure is received January 1 through March 31, the fee for initial licensure will be \$300;

(B) If the application for initial licensure is received April 1 through June 30, the fee for initial licensure will be \$225;

(C) If the application for initial licensure is received July 1 through September 30, the fee for initial licensure will be \$150; and

(D) If the application for initial licensure is received October 1 through December 31, the fee for initial licensure will be \$75.

(c) The fee for a criminal background check shall be \$50.

(d) The fee for an initial certificate of special competency in natural childbirth shall be \$60.

(e) The annual license renewal fee for an active Naturopathic license shall be \$300.

(f) The annual license renewal fee for an inactive license shall be \$140.

(g) The annual renewal fee for a retired license shall be \$15.

(h) The annual renewal fee for a certificate of special competency in natural childbirth shall be \$60.

(i) A late fee of \$100 will be charged for any renewal that does not meet the December 15 deadline per OAR 850-030-0195.

(j) The fee to reinstate a lapsed license to active status within 12 months of being lapsed shall be \$300 plus a restoration fee of \$150.

(k) The annual fee mandated for all licensees with the authority to prescribe shall be \$25;

(l) Duplicate license fee shall be \$25;

(m) Wall certificate shall be \$25;

(n) The fee for mailing an examination packet shall be \$40 or the current rate charged for the secure overnight mailing of examinations;

(o) Mailing list in any version shall be \$50;

(p) Copies of public documents shall be \$15 for the first ten single-sided pages and 10 cents per page hereafter.

(2) All Board fees and fines are non-refundable.

Stat. Auth.: ORS 685.100(6)(b) & 685.100(6)(c)

Stats. Implemented: ORS 685.100 & 685.102

Hist.: NE 1-1987(Temp), f. 9-17-87, ef. 10-1-87; NE 1-1988, f. & cert. ef. 3-15-88; NE 1-1996, f. & cert. ef. 10-18-96; NE 2-1997(Temp), f. 12-1-97, cert. ef. 12-2-97 thru 5-31-98; BNE 1-1998(Temp), f. 7-15-98, cert. ef. 8-3-98 thru 1-30-99; BNE 2-1998, f. 7-31-98, cert. ef. 8-3-98; BNE 2-1999, f. & cert. ef. 9-24-99; BNE 5-2000, f. & cert. ef. 12-6-00; BNE 4-2003, f. & cert. ef. 10-9-03; Renumbered from 850-010-0035, BNE 8-2005, f. & cert. ef. 10-27-05; BNE 3-2008, f. 4-21-08, cert. ef. 6-10-08; BNE 3-2009, f. & cert. ef. 10-6-09; OBNM 5-2011(Temp), f. & cert. ef. 10-17-11 thru 1-17-12; Administrative correction, 2-24-12; OBNM 1-2013, f. & cert. ef. 4-12-13; OBNM 2-2014, f. & cert. ef. 7-10-14

## 850-035-0230

### Requirements for Certification to Practice Natural Childbirth

A naturopathic physician maintaining an active license in Oregon, who wishes to practice natural childbirth must apply to and receive from the board a certificate of special competency in natural childbirth. To receive and maintain a certificate, the licensee must fulfill the following requirements:

(1) Complete at least 200 hours of course work at an approved naturopathic college or hospital in obstetrics and furnish a signed log showing evidence that (a) and (b) and (c) of this subsection have been completed under the direct supervision of a licensed practitioner with specialty training in obstetrics and/or natural childbirth:

(a) Licensee must have taken part in the care of 50 cases each in prenatal and postnatal care; one case may qualify for both areas of care; and

(b) Licensee must have observed and assisted in the intrapartum care and delivery of 50 childbirths in a hospital or alternative birth setting.

(c) A minimum of 5 births must have taken place within 2 years of the date of the application.

(d) A minimum of 26 total births must be under the supervision of a naturopathic doctor. No more than 10 of the 50 births may be under the supervision of a medical doctor. No more than 10 of the births may be observation only. A labor and delivery that starts under the care of a naturopathic doctor and includes hospitalization shall count as a birth; and

(e) Licensee must hold a current neonatal resuscitation certificate.

(2) Licensee must pass a specialty exam in obstetrics given by or approved by the Board, after first completing the 200 hours of coursework as required above, and participating in the care of at least 15 cases each in prenatal, intrapartum, and postnatal care; one case may qualify for all these areas of care.

(3) Review of birth records as required by (1)(b) must be completed and approved by a Board appointed licensee of this Board holding a certificate of special competency in natural childbirth for at least five years.

(4) A complete application for a certificate of special competency in natural childbirth must be submitted within three years of passing the specialty examination and must include:

(a) A completed application form furnished by the Board;

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(b) Birth/Prenatal/Postnatal logs, meeting all the requirements of this rule;

(c) Verification of passage of an approved specialty examination per subsection (2) of this rule;

(d) Current neonatal resuscitation certification; and

(e) Appropriate fee(s) per OAR 850-0035.

(5) Licensee holding a natural childbirth certification must annually, including initial year of certification, submit 15 hours of Board approved continuing education relevant to natural childbirth, which may be used to satisfy ORS 685.102.

(a) Licensee must submit proof of current certification in neonatal resuscitation annually.

(b) Licensee will participate in at least 3 hours of case review per year with other out-of-hospital birth providers; ideally other naturopathic physicians with natural childbirth certification.

(c) The hours in case review may count towards the continuing education hours required for renewal up to a maximum of 12 hours annually.

(6) Licensing action by the Board under ORS 685.100 shall be deemed to have an equal effect upon a certificate of special competency issued the practitioner, unless specifically provided otherwise in the Board action. When the subject of a disciplinary proceeding under 685.100 relates specifically to the practice of natural childbirth by a licensee who possesses a certificate of special competency, the license action may in lieu of effecting the entire scope of the licensee's practice, suspend, revoke, or curtail only the practitioner's authority under a certificate of special competency.

Stat. Auth.: ORS 183 & 685

Stats. Implemented: ORS 685.100, 685.102, 685.135 & 685.160

Hist.: NE 3-1985(Temp), f. & ef. 9-23-85; NE 1-1986, f. & ef. 4-10-86; NE 1-1996, f. & cert. ef. 10-18-96; NE 2-1997(Temp), f. 12-1-97, cert. ef. 12-2-97 thru 5-31-98; administrative correction 8-9-99; BNE 1-2001, f. & cert. ef. 2-7-0; Renumbered from 850-010-0230, BNE 8-2005, f. & cert. ef. 10-27-05; BNE 1-2009, f. & cert. ef. 4-30-09; BNE 4-2009, f. & cert. ef. 10-6-09; BNE 5-2009(Temp), f. & cert. ef. 10-13-09 thru 12-31-09; BNE 6-2009, f. 11-2-09, cert. ef. 1-1-10; OBNM 3-2011, f. & cert. ef. 6-15-11; OBNM 3-2013, f. & cert. ef. 4-12-13; OBNM 2-2014, f. & cert. ef. 7-10-14

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**Rule Caption:** Adds substances and makes corrections to the formulary rule for Naturopathic physician's and pharmacist's reference

**Adm. Order No.:** OBNM 3-2014

**Filed with Sec. of State:** 7-10-2014

**Certified to be Effective:** 7-10-14

**Notice Publication Date:** 5-1-2014

**Rules Amended:** 850-060-0226

**Subject:** Amends the naturopathic formulary classifications to include Mechlorethamine, and a miscellaneous class to antidiabetic agents; and corrects subsection (25) to include minerals.

**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.
    - (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  $\beta$ -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)  $\alpha$ -Adrenergic Agonists;

(B)  $\beta$ - Adrenergic Agonists;

(i) Non-selective  $\beta$ - Adrenergic Agonists;

(ii) Selective  $\beta_1$ - Adrenergic Agonists;

(iii) Selective  $\beta_2$ - Adrenergic Agonists;

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- (C)  $\alpha$ -And  $\beta$ -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) Hemorrhologic 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  $\alpha$ -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)  $\alpha$ -Adrenergic Blocking Agents;
  - (g)  $\beta$ -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, does not include Barbiturates;
    - (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.
  - (B) Antipsychotics, to include only the following: Atypical 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;

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- (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) B-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-HT<sub>3</sub> Receptor Antagonists;
- (C) Antiemetics, Miscellaneous.
- (h) Antiulcer Agents and Acid Suppressants;
- (A) Histamine H<sub>2</sub>-Antagonists;
- (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) Hormones and Synthetic Substitutes;
- (a) Adrenals;
- (b) Androgens;
- (c) Contraceptives;
- (d) Estrogens and Antiestrogens;
- (A) Estrogens;
- (B) Estrogen Agonists-Antiagonists.
- (e) Gonadotropins;
- (f) 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.
- (g) Antihypoglycemic Agents: Glycogenolytic Agents;
- (h) Parathyroid;
- (i) Pituitary;
- (j) Somatotropin Agonists and Antagonists;
- (A) Somatotropin Agonists;
- (B) Somatotropin Antagonists;
- (k) Progestins;
- (l) Thyroid and Antithyroid Agents;
- (A) Thyroid Agents;
- (B) Antithyroid Agents.
- (20) Local Anesthetics.
- (21) Oxytocics, except for Mifepristone.
- (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 and Minerals.
  - (26) Miscellaneous Therapeutic Agents;
  - (a) Alcohol Deterrents limited to the following:  
(A) Acamprostate;
  - (B) Disulfiram;
  - (C) Naltrexone.
  - (b) 5-a Reductase Inhibitors;
  - (c) Antidotes;
  - (d) Antigout Agents;
  - (e) Biologic Response Modifiers  
(A) Interferons;
  - (B) Dimethyl Funarate;
  - (f) Bone Resorption Inhibitors;
  - (g) Cariostatic Agents;
  - (h) Complement Inhibitors;
  - (i) Disease-Modifying Antirheumatic Agents;
  - (j) Gonadotropin-releasing Hormone Antagonists;
  - (k) Immunosuppressive Agents;
  - (l) Other Miscellaneous Therapeutic Agents limited to the following:  
(A) Alfuzosin Hydrochloride;
  - (B) Drotrecogin Alfa (Activated);
  - (C) Lanreoytide Acetate;
  - (D) Rilonecept;
  - (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

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## Oregon Business Development Department Chapter 123

**Rule Caption:** These rule amendments relate to the Oregon Low Income Community Jobs Initiative.

**Adm. Order No.:** OBDD 11-2014

**Filed with Sec. of State:** 6-30-2014

**Certified to be Effective:** 7-1-14

**Notice Publication Date:** 6-1-2014

**Rules Amended:** 123-630-0090, 123-630-0100

**Subject:** Rules for the Oregon Low Income Community Jobs Initiative were recently filed and made permanent in April. This filing amends two items that were not identified in the last filing. \$130 mil-

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lion of qualified equity investment authority in 123-630-0090(3) has been changed to \$170 million and number 3 in 123-630-0100 has been moved to 123-630-0090(5) the language remains the same.

**Rules Coordinator:** Mindee Sublette—(503) 986-0036

## 123-630-0090

### Limitations for Certification

(1) Once the department has certified a cumulative amount of qualified equity investments that can result in the utilization of \$16 million of tax credits in any tax year, the department may not certify any more qualified equity investments under ORS 285C.650 and OAR 123-630-0080. This limitation shall be based on the scheduled utilization of tax credits without regard to the potential for taxpayers to carry forward tax credits to later tax years.

(2) The department will reserve \$30 million of qualified equity investment authority for qualified low-income community investments in qualified active low-income community businesses that:

(a) Have a primary purpose of improving the environment or reducing emissions of greenhouse gases; or

(b) Produce goods that directly reduce emissions of greenhouse gases or are designed as environmentally sensitive replacements for products in current use.

(3) The department will reserve \$170 million of qualified equity investment authority for all other qualified active low-income community investments (which may include the types of investments described in ORS 285C.653(s) and OAR 123-630-0090(2)).

(4) All applications will indicate the amount of qualified equity investment authority sought by the applicant under OAR 123-630-0090(2) and 123-630-0090(3). The maximum amount of qualified equity investment authority for which an applicant may apply under 123-630-0090(2) is \$30 million and under 123-630-0090(3) is \$170 million.

(5) The department shall pre-screen a qualified community development entity's proposed investment in a qualified active low-income community business for purposes of determining if the business satisfies the requirements of ORS 285C.653(2) and OAR 123-630-0090(2). The department shall, not later than 15 business days after the date of receipt of all relevant documentation, determine whether the qualified active low-income community business satisfies the requirements of ORS 285C.653(2) and OAR 123-630-0090(2) and notify the qualified community development entity in writing of the determination and an explanation of its determination. If the department fails to notify the qualified community development entity with respect to the proposed investment within the period specified in this paragraph, the business in which the qualified community development entity proposes to invest is considered to satisfy the requirements of ORS 285C.653(2) and OAR 123-630-0090(2).

Stat. Auth.: ORS 285C.650 – 653, 315.526 – 315.536

Stats. Implemented: ORS 315.526 – 315.536

Hist.: OBDD 9-2012, f. & cert. ef. 6-1-12; OBDD 9-2013(Temp), f. & cert. ef. 10-15-13 thru 4-11-14; OBDD 6-2014, f. & cert. ef. 4-1-14; OBDD 11-2014, f. 6-30-14, cert. ef. 7-1-14

## 123-630-0100

### Recapture of Tax Credit

(1) The Department of Revenue may recapture any portion of a tax credit per ORS 285C.656 and ORS 315.533.

(2) The Department of Revenue may recapture any portion of a tax credit if the qualified community development entity applies for and receives qualified equity investment authority under ORS 285C.653(2) and OAR 123-630-0090(2) and fails to invest at least 85 percent of the cash purchase price of the QEI in qualified active low-income community businesses that satisfy the requirements of ORS 285C.653(2) and OAR 123-630-0090(2) within 12 months of the issuance of the qualified equity investment and maintain such level of investment in qualified active low-income community businesses satisfying such requirements until the last credit allowance date for such qualified equity investment.

Stat. Auth.: ORS 285C.656 & 315.526 – 315.536

Stats. Implemented: ORS 285C.656 & 315.526 – 315.536

Hist.: OBDD 9-2012, f. & cert. ef. 6-1-12; OBDD 9-2013(Temp), f. & cert. ef. 10-15-13 thru 4-11-14; OBDD 6-2014, f. & cert. ef. 4-1-14; OBDD 11-2014, f. 6-30-14, cert. ef. 7-1-14

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**Rule Caption:** These rule amendments relate to the Entrepreneurial Development Loan Fund.

**Adm. Order No.:** OBDD 12-2014

**Filed with Sec. of State:** 6-30-2014

**Certified to be Effective:** 7-1-14

**Notice Publication Date:** 6-1-2014

**Rules Amended:** 123-019-0010, 123-019-0020, 123-019-0030, 123-019-0040, 123-019-0050, 123-019-0060, 123-019-0100

**Subject:** In the 2014 Regular Legislative Session, SB 1563 was passed. The amendments in these rules increase the maximum Entrepreneurial Development Loan Fund (EDLF) loan amount from \$70,000 to \$100,000 per borrower and modifies the maximum loan term from 5 years to 10 years.

**Rules Coordinator:** Mindee Sublette—(503) 986-0036

## 123-019-0010

### Definitions

For the purposes of these rules additional definitions may be found in Procedural Rules, OAR 123-001. For purposes of this division of administrative rules, unless the context demands otherwise:

(1) "Applicant" means any individual, association of individuals, joint venture, partnership or corporation, person or any combination of persons applying for a loan from the Oregon Entrepreneurial Development Fund.

(2) "Certified Entity" means any entity certified by the Director of the Business Development Department under OAR 123-019-0100.

(3) "Equity" means cash, real and personal property owned or controlled by an Applicant and committed to use in the project for which a loan from the Fund is being sought. Property other than cash will be conservatively valued by the Department.

(4) "Fund" or "EDLF" means the Oregon Entrepreneurial Development Fund as defined and set forth in Section 13, Chapter 688, Oregon Laws 1991.

(5) "Loan Committee" means any loan committee selected by the Director from the Finance Committee or otherwise appointed by the Director. The Loan Committee shall consist of at least three members, and the Director shall select one of its members to be chair. The Loan Committee shall meet at the call of the chair. Two members of the Loan Committee shall constitute a quorum to transact the business of the Loan Committee.

(6) "Project" means the acquisition, improvement, rehabilitation, construction, operation or maintenance of any property, real or personal, that is or will be used or is suitable for use by an economic enterprise, but not including:

(a) A loan for the purchase or construction of residential housing;

(b) A loan for the purchase of property that will not be used for the business operation of the Applicant or is a passive real property investment not used to house the operations of a related company;

(c) A loan for the refinancing of an existing loan; the loan request may be considered for approval if such existing loan was for a business purpose and the refinance is necessary to secure collateral for or improve the collateral coverage and is a minor part of the new loan.

(7) "Severely Disabled Individuals" means individuals certified as severely disabled by the Vocational Rehabilitation Division of the Department of Human Resources or the Commission for the Blind.

(8) "Small Business Development Center" or "SBDC" means any small business development center described in the Small Business Training Assistance Act of 1983.

(9) "Small Business Management Program" means any of the following:

(a) A going into business class;

(b) A Small Business Management Program offered by an Oregon SBDC;

(c) Any series of classes/seminars/workshops/counseling sessions that meet the approval of a Small Business Development Center or Certified Entity.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285B.740-285B.758, Ch. 688, OL 1991, Ch. 765, OL 1993

Hist.: EDD 16-1991(Temp), f. & cert. ef. 11-8-91; EDD 12-1992, f. & cert. ef. 8-26-92; EDD 7-1993(Temp), f. & cert. ef. 9-17-93; EDD 3-1994, f. 2-4-94, cert. ef. 2-7-94; EDD 8-1995, f. & cert. ef. 10-26-95; EDD 23-2008, f. 7-31-08, cert. ef. 8-1-08; OBDD 10-2010(Temp), f. & cert. ef. 4-12-10 thru 10-9-10; OBDD 34-2010, f. & cert. ef. 10-1-10; OBDD 35-2010, f. 10-14-10, cert. ef. 10-15-10; OBDD 12-2014, f. 6-30-14, cert. ef. 7-1-14

## 123-019-0020

### Eligibility

(1) To be eligible for a loan from the Fund, each Applicant must meet at least one of the criteria in this section:

(a) The Applicant must have had total revenues of \$500,000 or less in the 12 calendar months immediately preceding the date application is made to the Fund;

# ADMINISTRATIVE RULES

(b) At least 50 percent of the Applicant business or proposed business must be owned by an individual or individuals classified as Severely Disabled.

(2) The Applicant may not be effectively owned or controlled by another business entity or other person or own or control another business entity that, either by itself or when combined with the Applicant, is not eligible for a loan under this rule. Ownership of 50 percent or more of the Applicant would constitute, or a subsidiary which sells a majority of its goods or services to the parent may constitute, effective ownership or control. The Director may, however, make this determination based on the facts of an individual case.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285B.740 – 285B.758

Hist.: EDD 16-1991(Temp), f. & cert. ef. 11-8-91; EDD 12-1992, f. & cert. ef. 8-26-92; EDD 7-1993(Temp), f. & cert. ef. 9-17-93; EDD 3-1994, f. 2-4-94, cert. ef. 2-7-94; EDD 11-1997(Temp), f. & cert. ef. 10-7-97; EDD 10-1998, f. & cert. ef. 5-22-98; EDD 5-2007(Temp), f. & cert. ef. 8-28-07 thru 2-22-08; EDD 4-2008(Temp), f. & cert. ef. 2-26-08 thru 8-1-08; EDD 23-2008, f. 7-31-08, cert. ef. 8-1-08; OBDD 10-2010(Temp), f. & cert. ef. 4-12-10 thru 10-9-10; OBDD 34-2010, f. & cert. ef. 10-1-10; OBDD 12-2014, f. 6-30-14, cert. ef. 7-1-14

## 123-019-0030

### Application Procedure

(1) Each Applicant shall certify to SBDC or other Certified Entity and the Department that it is an eligible Applicant for the Fund under OAR 123-019-0020(1) and shall specify which of the criteria outlined in 123-019-0020(1) it meets.

(2) The SBDC or Certified Entity may enroll the Applicant in an appropriate Small Business Management Program. Each Applicant shall have completed a Small Business Management Program or shall be enrolled in a Small Business Management Program prior to Department action on such Applicant's loan request. Each Applicant shall certify to the Department they are enrolled in or have completed a Small Business Management Program.

(3) Each Applicant must complete a business plan prior to applying for a loan from the Fund. Such business plan shall use the standard format set forth in Your Business Plan by Dennis J. Sargent or other such format as may be acceptable to the SBDC or Certified Entity and the Department.

(4) The business plan must be reviewed by the Director or counseling staff of the SBDC or Certified Entity where the Applicant is enrolled in a Small Business Management Program or where the Applicant is receiving assistance with the preparation of the business plan. Review of the business plan by the SBDC or Certified Entity does not imply any judgment by the SBDC or Certified Entity as to the accuracy or validity of the plan.

(5) Upon completion and review of the business plan as provided in sections (3) and (4) of this rule, the business plan, together with a credit application on the form provided by the Department, shall be forwarded to the Department for consideration. The credit application shall contain a detailed list of the proposed uses of the proceeds of the loan being sought from the Fund.

(6) The Department may require such additional information from an Applicant as the Department determines is necessary for a thorough review and analysis of the application.

(7) Upon completion of its review the Department shall forward the application to the Director, with a recommendation for action. The Department may submit the application to the Loan Committee for its recommendation. The Director may:

- (a) Approve the application; or
- (b) Deny the application; or
- (c) Return the application to the Applicant for further information.

(8) If a loan request is approved, the Department shall prepare such documents as are necessary to close the loan transaction. Such documents shall reflect all terms and conditions upon which the Director may have conditioned his or her approval of the loan.

(9) A Borrower may apply for and the Director may approve subsequent loans from the Fund. No borrower may receive more than an aggregate amount of \$100,000 in loan proceeds from the Fund. Applicants for subsequent loans must meet the eligibility requirements outlined in 123-019-0020.

(10) The Department may notify the SBDC or Certified Entity if any Borrower with which the SBDC or Certified Entity has worked becomes delinquent in its payment or otherwise acts in such a manner as to jeopardize the repayment of the loan.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285B.240 - 285B.758, Ch. 688, OL 1991, Ch. 765, OL 1993

Hist.: EDD 16-1991(Temp), f. & cert. ef. 11-8-91; EDD 12-1992, f. & cert. ef. 8-26-92; EDD 7-1993(Temp), f. & cert. ef. 9-17-93; EDD 3-1994, f. 2-4-94, cert. ef. 2-7-94; EDD 8-1995, f. & cert. ef. 10-26-95; EDD 11-1997(Temp), f. & cert. ef. 10-7-97; EDD 10-1998, f. & cert. ef. 5-22-98; OBDD 10-2010(Temp), f. & cert. ef. 4-12-10 thru 10-9-10; OBDD 34-2010, f.

& cert. ef. 10-1-10; OBDD 35-2010, f. 10-14-10, cert. ef. 10-15-10; OBDD 12-2014, f. 6-30-14, cert. ef. 7-1-14

## 123-019-0040

### Loan Conditions

The Director may approve a loan request if the Director finds that:

(1) The Applicant and the project are eligible for a loan from the Fund according to the criteria set forth in OAR 123-019-0020 and 123-019-0030.

(2) The Applicant has available, and has irrevocably committed to the project, Equity funds in the form of cash or property in an amount equal to or greater than 20 percent of the amount of the loan from the Fund.

(3) The proposed project is feasible and a reasonable risk from practical and economic standpoints, and the loan has a reasonable prospect of repayment from cash flow and collateral.

(4) The Applicant will provide good and sufficient collateral for the loan. The collateral coverage ratio for the loan should be at least 1:1 ratio applying the following advance rates:

(a) Real property will generally be valued for collateral purposes at 80 percent of the tax assessed value or 90 percent of appraised value;

(b) New construction will generally be valued for collateral purposes at no more than 90 percent of cost;

(c) Existing machinery will generally be valued for collateral purposes at 70 percent of depreciated book value;

(d) Newly acquired machinery will generally be valued for collateral purposes at 60 percent of acquisition cost for new equipment and 75% of acquisition cost for used equipment.

(5) The Department may, in its sole discretion, assign a value of more or less than the above percentages. Applicants should be aware that the collateral value of out-of-state real property will be significantly discounted from nominal assessed or appraised value.

(6) Monies in the Fund are or will be available for the proposed project.

(7) The Applicant's financial resources and management capability appear adequate to assure success of the project.

(8) The amount borrowed from the Fund by any borrower at any one time does not exceed \$75,000 and the total amount borrowed does not exceed \$100,000.

(9) The Director may, in his or her sole discretion, permit the assumption of an outstanding EDLF loan, if the assuming obligor satisfies the Director as to its willingness and ability to service the loan, and if the State's collateral position is not diminished. The Director may require the obligor to meet all eligibility requirements set out in OAR 123-019-0020 and 123-019-0030. EDLF loans are not necessarily or automatically assumable.

(10) The Applicant agrees to abide by all laws and regulations applicable to the Applicant's project and will receive all applicable federal, state and local permits and licenses before the disbursement of any proceeds from the Fund.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285B.740 - 285B.758

Hist.: EDD 16-1991(Temp), f. & cert. ef. 11-8-91; EDD 12-1992, f. & cert. ef. 8-26-92; EDD 11-1997(Temp), f. & cert. ef. 10-7-97; EDD 10-1998, f. & cert. ef. 5-22-98; EDD 5-2007(Temp), f. & cert. ef. 8-28-07 thru 2-22-08; EDD 4-2008(Temp), f. & cert. ef. 2-26-08 thru 8-1-08; EDD 23-2008, f. 7-31-08, cert. ef. 8-1-08; OBDD 10-2010(Temp), f. & cert. ef. 4-12-10 thru 10-9-10; OBDD 34-2010, f. & cert. ef. 10-1-10; OBDD 35-2010, f. 10-14-10, cert. ef. 10-15-10; OBDD 12-2014, f. 6-30-14, cert. ef. 7-1-14

## 123-019-0050

### Loan Agreement

If the Director approves the loan, the Director, on behalf of the state, and the borrower may enter into a loan contract of not more than \$75,000, secured by Collateral, which shall set forth, among other matters:

(1) A plan for repayment by the Borrower to the Fund of monies borrowed from the Fund used for the Project with interest charged on those monies at a fixed rate of at least two percentage points (2%) more than the prevailing bank prime interest rate. For the purposes of this section, the prevailing bank prime interest rate shall be the rate set forth in the most recent Federal Reserve Statistical Release H.15(519) which the Department has received at the time the loan is approved. Notwithstanding the foregoing, the interest shall not exceed 18 percent per annum. The repayment plan, among other matters:

(a) Shall provide for commencement of repayment by the Applicant of monies used for the Project and interest thereon no later than six months after the date of the loan contract or at such other time as the Director may provide;

(b) May provide for reasonable extension of the time for making any repayment, not to exceed six months, in emergency or hardship circumstances if approved by the Director.

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(c) Shall provide for such evidence of debt, assurance of and security for, repayment of the loan as is considered necessary by the Director;

(d) Shall set forth a schedule of payments and the period of the loan which shall not exceed the usable life of the assets financed or ten years from the date of the contract, whichever is less. The payment schedule shall include payment of interest which accrues during any period of delay in repayment authorized by subsection (b) of this section, and the payment schedule may require payments of varying amounts for collection of accrued interest;

(e) Shall set forth a procedure for formal declaration of delinquency or default of payment by the Department. Loans shall be declared delinquent when any payment is more than ten days late. Borrower shall be notified in writing of declaration of delinquency, and shall have 31 days from the original payment date to bring the loan current. If the loan is not brought current, or arrangements satisfactory to the Department for bringing the loan current have not been made, the Department may declare the loan in default, may declare the entire outstanding indebtedness to be forthwith due and payable and may assign the loan to the Attorney General for collection. The Department shall inform the borrower of each default and action taken in connection therewith. The Director may in his or her sole discretion waive or delay such assignment.

(2) Provisions satisfactory to the Department for field engineering and inspection, the Department to be the final judge of completion of the Project;

(3) That the liability of the state under the contract is contingent upon the availability of monies in the Fund for use in the Project;

(4) Such further provisions as the Director considers necessary to insure expenditure of the funds for the purposes set forth in the approved application;

(5) That the Department may institute appropriate action or suit to prevent use of the facilities of a Project financed by the Fund if the Borrower is delinquent in the repayment of any monies due the Fund;

(6) That the Borrower is responsible for payment of:

(a) All of the expenses of the operation and maintenance of the Project, including adequate insurance;

(b) All taxes and special assessments levied with respect to the business or the Project;

(c) Insurance premiums and providing insurance in amount and coverage acceptable to the Department. Such insurance shall include but shall not be limited to: Fire and hazard insurance, liability insurance, and flood insurance if applicable at the sole discretion of the Department; and

(d) All out-of-pocket costs associated with the loan closing including but not limited to filing recording fees, title insurance and appraisals.

(7) That the Borrower will provide to the Department on an annual basis, within 120 days of the end of each fiscal year, financial statements prepared in accordance with generally accepted accounting principles. In addition, copies of federal tax returns may be required to be submitted annually. The Department may require additional financial information or more frequent financial statements;

(8) In the case of a loan made to an association, corporation or partnership, each partner and each owner of 20 percent or more of the corporation or association will provide a personal guaranty for the payment of all interest and repayment of principal amount of the loan unless the Director in his or her sole discretion, expressly waives such requirement;

(9) The Department may, in its sole discretion, disburse the proceeds of an approved loan in such amounts and at such times as the Department feels necessary to ensure that loan proceeds are used for the stated purposes and to preserve the integrity of the Fund. If the Department in its sole discretion determines that the financial condition of the Borrower has deteriorated since the eligibility and application process was commenced, the Department shall be under no obligation to disburse any loan funds.

[Publications referenced are available from the agency.]

Stat. Auth.: ORS 285A.075, 285B.740 - 285B.758

Stats. Implemented: ORS 285B.740 - 285B.758

Hist.: EDD 16-1991(Temp), f. & cert. ef. 11-8-91; EDD 12-1992, f. & cert. ef. 8-26-92; EDD 11-1997(Temp), f. & cert. ef. 10-7-97; EDD 10-1998, f. & cert. ef. 5-22-98; OBDD 10-2010(Temp), f. & cert. ef. 4-12-10 thru 10-9-10; OBDD 34-2010, f. & cert. ef. 10-1-10; OBDD 35-2010, f. 10-14-10, cert. ef. 10-15-10; OBDD 12-2014, f. 6-30-14, cert. ef. 7-1-14

## 123-019-0060

### Appeals, Monitoring, Amendments and Modifications

(1) If the Director denies a loan request, the Department shall inform the Applicant in writing of the reasons for such denial.

(2) A denied Applicant has the right to appeal in writing the Director's denial, whereupon the Department shall schedule an appeal hearing in front of the Director, the Director's designee or the Loan Committee, as the Department may decide. The Applicant may appear in person at the appeal

hearing, and may introduce whatever books, documents and data it regards as necessary to support the appeal.

(3) An Applicant whose appeal has been denied must submit a new credit application to be eligible for consideration of a new loan request. This requirement may be waived by the Director, in his or her sole discretion.

(4) All loans shall be monitored by, and all loan repayments shall be made to, the Department or its assignee.

(5) It is the responsibility of the borrower to ensure that its payment arrives in the Department by the due date.

(6) Any request for modification or amendment to any loan condition shall be made in writing to the Department and approved by the Director. The Director may refer a request for modification or amendment to the Loan Committee for recommendation.

(7) If the Director consents to any requested modification or amendment, the borrower shall be responsible for all costs of modifying or amending any loan documents, filings, recordings or financing statements.

Stat. Auth.: ORS 285A.075, 285B.740 - 285B.758

Stats. Implemented: ORS 285A.075, 285B.740 - 285B.758, Ch. 765, OL 1993

Hist.: EDD 16-1991(Temp), f. & cert. ef. 11-8-91; EDD 12-1992, f. & cert. ef. 8-26-92; OBDD 10-2010(Temp), f. & cert. ef. 4-12-10 thru 10-9-10; OBDD 34-2010, f. & cert. ef. 10-1-10; OBDD 12-2014, f. 6-30-14, cert. ef. 7-1-14

## 123-019-0100

### Certification of Entities for Business Plan Review

(1) In addition to SBDCs, the Director may certify an entity for the review of business plans and for providing a Small Business Management Program if the Director finds in his or her sole discretion that the entity possesses:

(a) Sufficient experience in providing financial counseling to businesses;

(b) Sufficient experience in providing a Small Business Management Program; and

(c) Sufficient experience in reviewing business plans.

(2) The Director may establish time periods for certification and review in his or her sole discretion.

(3) The SBDCs and certified entities will continue to provide small business management services and counseling to the Applicant after the loan has been provided to the Applicant.

Stat. Auth.: ORS 285A.075, 285B.740 - 285B.758

Stats. Implemented: ORS 285B.740 - 285B.758, Ch. 688, OL 1991 & Ch. 765, OL 1993

Hist.: EDD 8-1995, f. & cert. ef. 10-26-95; OBDD 10-2010(Temp), f. & cert. ef. 4-12-10 thru 10-9-10; OBDD 34-2010, f. & cert. ef. 10-1-10; OBDD 35-2010, f. 10-14-10, cert. ef. 10-15-10; OBDD 12-2014, f. 6-30-14, cert. ef. 7-1-14

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## Oregon Department of Education Chapter 581

**Rule Caption:** English Language Proficiency Standards Professional Learning Grant

**Adm. Order No.:** ODE 22-2014

**Filed with Sec. of State:** 6-24-2014

**Certified to be Effective:** 6-24-14

**Notice Publication Date:** 5-1-2014

**Rules Adopted:** 581-018-0540, 581-018-0543, 581-018-0546, 581-018-0549, 581-018-0552, 581-018-0553, 581-018-0556

**Subject:** Establishes new grant to provide cyclical, reflective professional learning opportunities for Oregon educators to support the implement of new English Language Proficiency Standards.

**Rules Coordinator:** Cindy Hunt—(503) 947-5651

### 581-018-0540

#### Definitions

The following definitions apply to OAR 581-018-0540 to 581-018-0556:

(1) "English Language Proficiency Standards" means the standards adopted by the State Board of Education to show what a student should know and be able to do at a given grade level. The English Language Proficiency Standards are also referred to as ELP Standards.

(2) "English Learner" or "English Language Learner" means a student who meets the definition of "Limited English Proficient" found in Title IX, Part A, Section 9101.25 of the No Child Left Behind Act of 2001 (NCLB).

(3) "Massive Open Online Course (MOOC)" means an online course aimed at unlimited participation and open access via the Internet.

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(4) "Professional Learning" means opportunities that allow educators to collaborate and learn about new standards, methodologies, and strategies for working with students.

(5) "Training of Trainers" means a style of training designed to equip small groups of trainers with the skills, knowledge and strategies to train larger groups of educators in their local school districts.

(6) "ELP Standards Work Group" refers to a group of lead educators established under OAR 581-018-0546 that serve as an advisory body and corps of trainers in the Professional Learning Team Conference.

Stat. Auth. ORS 342.950

Stat. Implemented: ORS 342.950

Hist.: ODE 7-2014(Temp), f. & cert. ef. 2-19-14 thru 8-18-14; ODE 14-2014(Temp), f. & cert. ef. 3-4-14 thru 8-18-14; ODE 22-2014, f. & cert. ef. 6-24-14

## 581-018-0543

### Establishment

(1) There is established the English Language Proficiency Standards Professional Learning Grant.

(2) The purpose of the English Language Proficiency Standards Professional Learning Grant is to support target school districts with the implementation of the new English Language Proficiency Standards.

(3) The English Language Proficiency Standards Professional Learning Grant will support a training of trainers system that leverages Oregon's instructional leadership to incorporate the new ELP standards into teaching practice to support English Learners throughout the school day.

(4) ELD and mainstream educators within target school districts will participate in virtual and in-person professional learning opportunities to learn about the new ELP Standards and plan their implementation in classroom instruction.

Stat. Auth. ORS 342.950

Stat. Implemented: ORS 342.950

Hist.: ODE 7-2014(Temp), f. & cert. ef. 2-19-14 thru 8-18-14; ODE 14-2014(Temp), f. & cert. ef. 3-4-14 thru 8-18-14; ODE 22-2014, f. & cert. ef. 6-24-14

## 581-018-0546

### Purpose of Grant

(1) The purpose of the English Language Proficiency Standards Professional Learning Grant is to provide cyclical, reflective professional learning opportunities to Oregon educators to support the implementation of the new English Language Proficiency Standards throughout the state of Oregon by the end of the 2014–2015 school year.

(2) The Oregon Department of Education shall facilitate for target school districts:

(a) Statewide and regional workshops among districts to promote collaborative learning and sharing of best practices.

(b) A Massive Open Online Course to engage educators throughout Oregon in professional learning with the English Language Proficiency Standards.

(3) The Oregon Department of Education shall establish a ELP Standards Work Group and may contract with members of the ELP Standards Work Group to provide professional learning and technical assistance to support implementation of the ELP Standards within the target school districts.

Stat. Auth. ORS 342.950

Stat. Implemented: ORS 342.950

Hist.: ODE 7-2014(Temp), f. & cert. ef. 2-19-14 thru 8-18-14; ODE 14-2014(Temp), f. & cert. ef. 3-4-14 thru 8-18-14; ODE 22-2014, f. & cert. ef. 6-24-14

## 581-018-0549

### Eligibility

(1) The following school districts shall be eligible to receive the English Language Proficiency Standards Professional Learning Grant as target school districts:

(a) School districts with greater than 500 English Learners; or

(b) School districts where English Learners comprise 15% of the total student population in the district.

(2) A public charter school with English Learners within a target district may receive grant funds through the district and may participate in grant activities.

(3) Notwithstanding subsection (1) of this rule, a school district that would receive less than \$1,000 under OAR 581-018-0553 is not eligible to receive a grant except as a member of a consortium of target school districts.

Stat. Auth. ORS 342.950

Stat. Implemented: ORS 342.950

Hist.: ODE 7-2014(Temp), f. & cert. ef. 2-19-14 thru 8-18-14; ODE 14-2014(Temp), f. & cert. ef. 3-4-14 thru 8-18-14; ODE 22-2014, f. & cert. ef. 6-24-14

## 581-018-0552

### Grant Uses and Requirements

(1) The Oregon Department of Education shall distribute grant funds to eligible districts that agree to do the following:

(a) Commit a team of 4 members to participate in five Professional Learning Team (PLT) Conferences. Two PLT Conferences will be held in the 2013-2014 school year, followed by three PLT Conferences in the 2014–2015 school year. The district's ELP Standards Professional Learning Team will consist of:

(A) A district level curriculum and instruction leader;

(B) A Title III director;

(C) An English Language Development teacher; and

(D) A mainstream teacher.

(b) The district's ELP Standards Professional Learning Team will serve as a corps of trainers to lead professional learning within the district for ELD teachers, mainstream teachers, administrators, and staff.

(c) Professional Learning Teams must agree to participate in the Massive Open Online Course to be held at the beginning of the 2014–2015 school year.

(d) The Professional Learning Team must agree to create a model unit aligned to the new ELP Standards. This model unit will contain the following criteria, which will be posted to the network portal to be shared with colleagues throughout Oregon:

(A) Scope and sequence;

(B) Formative assessments;

(C) Summative assessment;

(D) Three sample lesson plans.

(e) The district's Superintendent must commit to attending at least one event identified by the Department of Education to develop an understanding of the ELP Standards.

(f) Participating target districts must also commit to serving as an observation site for neighboring districts. Peer to peer observation visits will be a critical component of sharing best practices aligned to the new ELP Standards.

Stat. Auth. ORS 342.950

Stat. Implemented: ORS 342.950

Hist.: ODE 7-2014(Temp), f. & cert. ef. 2-19-14 thru 8-18-14; ODE 14-2014(Temp), f. & cert. ef. 3-4-14 thru 8-18-14; ODE 22-2014, f. & cert. ef. 6-24-14

## 581-018-0553

### Funding

(1) The Department shall allocate funds to target school districts or consortia of target school districts to establish and support Professional Learning Teams to lead workshops for educators to implement the English Language Proficiency Standards.

(2) Provided that the district has met the requirements described in OAR 581-018-0552, the Department shall award districts that participate in the Professional Learning Team Conferences a non-competitive grant based on their total number of English Learners by district.

(3) The Department shall determine the amount of each grant as follows: Each target district grant about equals the district's number of English Language Learners multiplied by (the total amount available for distribution for the grants to districts divided by the total English Language Learners of all target school districts).

(4) Funds received by a school district under this section 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. ORS 342.950

Stat. Implemented: ORS 342.950

Hist.: ODE 7-2014(Temp), f. & cert. ef. 2-19-14 thru 8-18-14; ODE 14-2014(Temp), f. & cert. ef. 3-4-14 thru 8-18-14; ODE 22-2014, f. & cert. ef. 6-24-14

## 581-018-0556

### Reporting

The Oregon Department of Education will provide a template for an interim and final grant report. Grantees are required to submit a final report prior to receiving their final request for funds.

Stat. Auth. ORS 342.950

Stat. Implemented: ORS 342.950

Hist.: ODE 7-2014(Temp), f. & cert. ef. 2-19-14 thru 8-18-14; ODE 14-2014(Temp), f. & cert. ef. 3-4-14 thru 8-18-14; ODE 22-2014, f. & cert. ef. 6-24-14

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**Rule Caption:** American Indian/Alaskan Native Culturally Relevant Teaching, Learning, and Pedagogy Grant Program

**Adm. Order No.:** ODE 23-2014

**Filed with Sec. of State:** 6-24-2014

**Certified to be Effective:** 6-24-14

# ADMINISTRATIVE RULES

**Notice Publication Date:** 5-1-2014

**Rules Adopted:** 581-018-0520, 581-018-0523, 581-018-0526, 581-018-0529, 581-018-0532, 581-018-0535

**Subject:** Establishes grant program to support districts in developing equitable and culturally responsive professional development and training models and practices to improve academic outcomes for American Indian/Alaskan Native students.

**Rules Coordinator:** Cindy Hunt—(503) 947-5651

## 581-018-0520

### Definitions

The following definitions apply to OAR 581-018-0520 to 581-018-0535:

(1) “Achievement gap” means the research-based gap in opportunity that often exists between students who are economically disadvantaged, students learning English as a second language and students who are African American, Hispanic or Native American and their White peers.

(2) “American Indian”/Alaskan Native means persons having origins in any of the original peoples of North and South America (including Central American) and who maintain tribal affiliation or community attachment.

(3) “Closing the Achievement Gap for American Indian/Alaskan Native Students Grant” means the Grant established in OAR 581-018-0523 to implement ORS 342.950(3)(f).

(4) “Culturally and/or linguistically diverse” means: students who identify as racial and/or ethnically diverse (Hispanic, African American, Native American, Alaskan Native, Pacific Islander) or whose native language is not English.

(5) “Culturally competent” means the ability to successfully teach students who come from a culture or cultures other than our own. It entails developing certain personal and interpersonal awareness and sensitivities, understanding certain bodies of cultural knowledge, and mastering a set of skills that, taken together, underlie effective cross-cultural teaching and culturally responsive teaching.

(6) “Culturally relevant” means pedagogy and practices that propose the following: students must experience academic success, students must develop and/or maintain cultural competence, and students must develop a critical consciousness through which they challenge the status quo of the current social order.

(7) “Culturally responsive” means the implicit use of the cultural knowledge, prior experiences, frames of reference, and performance styles of diverse students to make learning more appropriate and effective for them.

(8) “Non-profit organization” means:

(a) An organization established as a nonprofit organization under the laws of Oregon; and

(b) Qualifies as an exempt organization under section 501(c)(3) of the Internal Revenue Code as defined in ORS 314.011.

(9) “Postsecondary Institution” means:

(a) A community college operated under ORS Chapter 341.

(b) The following public universities within the Oregon University System:

(A) University of Oregon.

(B) Oregon State University.

(C) Portland State University.

(D) Oregon Institute of Technology.

(E) Western Oregon University.

(F) Southern Oregon University.

(G) Eastern Oregon University.

(H) Oregon Health and Science University.

(I) An Oregon-based, generally accredited, not-for-profit institution of higher education.

(10) “Systemic Equity” means the transformed ways in which systems and individuals habitually operate to ensure that every learner — in whatever learning environment that learner is found—has the greatest opportunity to learn enhanced by the resources and supports necessary to achieve competence, excellence, independence, responsibility, and self-sufficiency for school and for life.

(11) “Title VII Indian Education” means a federally funded program receiving United States Department of Education Title VII — Indian, Native Hawaiian, and Alaska Native Education funding.

(12) “Tribe” means:

(a) The Confederated Tribes of the Warm Springs Indian Reservation.

(b) The Confederated Tribes of the Umatilla Indian Reservation.

(c) The Burns-Paiute Tribe.

(d) The Confederated Tribes of Siletz Indians of Oregon.

(e) The Confederated Tribes of the Grand Ronde.

(f) The Cow Creek Band of Umpqua Indians.

(g) The Confederated Coos, Lower Umpqua and Siuslaw Tribes.

(h) The Klamath Tribe.

(i) The Coquille Tribe.

Stat. Auth.: ORS 342.950

Stat. Implemented: ORS 342.950

Hist.: ODE 18-2014(Temp), f. & cert. ef. 3-28-14 thru 9-24-14; ODE 23-2014, f. & cert. ef. 6-24-14

## 581-018-0523

### Establishment

(1) There is established the American Indian/Alaskan Native Culturally Relevant Teaching, Learning, and Pedagogy Grant Program to support the collaborative efforts to design, implement, improve, expand or otherwise infuse American Indian/Alaskan Native culturally responsive pedagogy and effective instructional practices to increase student academic achievement, high school completion and successful engagement in post-secondary educational opportunities.

(2) Subject to available funds, the grant will be awarded for the biennium based on a detailed description of proposed programming or services.

(3) The purpose of the grant program is to provide funds for programs that have the potential to become exemplar programs and can create collaborative practices through the facilitation of:

(a) Strengthening relationships between school district, local community and tribal governance;

(b) Collaboration between school districts, non-profit organizations, Title VII Indian Education Programs, postsecondary institutions, native communities or organizations, and education service districts to assist with identifying evidence-based practices and best practices;

(c) Enhancing the American Indian/Alaskan Native cultural competence of district educators;

(d) Developing and implementing best practices in an effort of increasing academic outcomes of American Indian/Alaskan Native; and

(e) Developing or expanding opportunities to include American Indian/Alaskan Native language and culture in classrooms.

Stat. Auth.: ORS 342.950

Stat. Implemented: ORS 342.950

Hist.: ODE 18-2014(Temp), f. & cert. ef. 3-28-14 thru 9-24-14; ODE 23-2014, f. & cert. ef. 6-24-14

## 581-018-0526

### Eligibility

(1) To be eligible to receive the American Indian/Alaskan Native Culturally Relevant Teaching, Learning, and Pedagogy Grant Program a qualified applicant must:

(a) Be a school district or consortia of districts and must have a partnership with one or more of Oregon’s federally recognized Tribes; or

(b) Be a non-profit organization focusing on Indian education applying in collaboration with a school district.

(2) Qualified applicants must also be available to work with a consultant, provided by Oregon Department of Education, to receive guidance and support during all phases of the funding cycle.

(3) A single grant proposal may include more than one eligible proposal and other entities but the lead agency for the proposal must be a school district or a non-profit organization.

(4) The Department of Education shall give preference to applicants that meet the minimum qualifications described in this section and who can demonstrate collaborative relationships with partners with expertise in working with American Indian/Alaskan Native students or educators who provide educational services to American Indian/Alaskan Native students. The partners may include but are not limited to postsecondary institutions, education service districts, federal Title VII Indian Education programs and native communities or organizations.

Stat. Auth.: ORS 342.950

Stat. Implemented: ORS 342.950

Hist.: ODE 18-2014(Temp), f. & cert. ef. 3-28-14 thru 9-24-14; ODE 23-2014, f. & cert. ef. 6-24-14

## 581-018-0529

### Criteria

(1) The Oregon Department of Education shall establish a request for proposal solicitation and approval process to be conducted for the American Indian/Alaskan Native Culturally Relevant Teaching, Learning, and Pedagogy Grant Program funds. All proposals must comply with the requirements of ORS 342.950 and rules adopted to implement that section.

(2) Grants shall be awarded based on the following criteria:

# ADMINISTRATIVE RULES

(a) Whether the grant application identifies how the funds will be used to reach the 40-40-20 goal and improve education outcomes for American Indian/Alaskan Native students as identified by the Oregon Education Investment Board Equity Lens document;

(b) Whether the grant application describes a strong and robust plan to close achievement gaps for American Indian/Alaskan Native students;

(c) Whether the grant application describes expected outcomes and a strong and robust plan to achieve those outcomes; and

(d) Whether the grant applications demonstrate how partners will collaborate on a mutually designed proposal in which all essential parties participate.

(3) The Department shall give priority to proposals that meet the minimum criteria and that demonstrate the use of evidence-based or best practice models of the required elements specific to American Indian/Alaskan Native:

(a) Culturally Responsive Pedagogy:

(A) Communication of high expectations.

(B) Teacher as facilitator within classroom.

(C) Integration of students' prior knowledge and skills through cultural activities, language, ways of life, the arts, and traditional knowledge system.

(D) Positive perspectives on parents and families of culturally and linguistically diverse students.

(E) Cultural sensitivity.

(F) Curricular decisions.

(G) Culturally mediated instruction.

(H) Student-centered, student-controlled classroom discourse.

(b) Culturally Responsive Leadership:

(A) Commitment to reform the educational system to reflect culturally responsiveness through organization of the school and school policies and procedures.

(B) Reshaping the curriculum.

(C) Professional development that is grounded in the principles of culturally responsive teaching.

(c) Culturally Responsive Community Engagement:

(A) Collaboration with one or more of the Tribes in Oregon or Title VII Indian Education Program.

(B) Postsecondary institution.

(C) Education Service Districts.

(D) Local American Indian/Alaskan Native communities and organizations.

(E) Community involvement of stakeholders (families, advocacy organizations, and other private, non-profit, business, faith-based organizations).

(F) Communication with families that is regular, uses diverse media and shares student achievement status and goals.

(d) Culturally Responsive Pre-Service and In-Service for Teachers:

(A) Coursework and field experiences for pre-service teachers that focuses on culturally responsive teaching, learning, and practice that:

(i) Reflects relevant research;

(ii) Uses local data;

(iii) Ensures principles of culturally responsive pedagogy.

(B) Includes collaboration with institutes of higher education (specifically Oregon Native American Indian Education Teacher Programs).

(e) Provide a sustainability plan to continue the program for at least two years after the grant funding has ended.

(f) The extent to which the proposal clearly documents its capacity to implement and carry out programming and services for American Indian/Alaskan Native culturally responsive pedagogy, practices, and professional development and demonstrates intentions to work in a collaboration with identified partners.

Stat. Auth.: ORS 342.950

Stat. Implemented: ORS 342.950

Hist.: ODE 18-2014(Temp), f. & cert. ef. 3-28-14 thru 9-24-14; ODE 23-2014, f. & cert. ef. 6-24-14

## 581-018-0532

### Funding

(1) The Department may award grants up to \$100,000 based on a detailed budget narrative and budget template.

(2) Grantees shall use funds received for the grant for activities outlined in the request for proposal.

(3) Grantees must be able to expend the funds for allowable purposes specified in the request for proposal within the grant timeline according to acceptable accounting procedures.

Stat. Auth.: ORS 342.950

Stat. Implemented: ORS 342.950

Hist.: ODE 18-2014(Temp), f. & cert. ef. 3-28-14 thru 9-24-14; ODE 23-2014, f. & cert. ef. 6-24-14

## 581-018-0535

### Reporting

The Oregon Department of Education shall provide to grant recipients a template for an interim and final grant report. Grantees are required to submit a final report prior to receiving their final request for funds.

Stat. Auth.: ORS 342.950

Stat. Implemented: ORS 342.950

Hist.: ODE 18-2014(Temp), f. & cert. ef. 3-28-14 thru 9-24-14; ODE 23-2014, f. & cert. ef. 6-24-14

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**Rule Caption:** Culturally Responsive Pedagogy and Practices Grant

**Adm. Order No.:** ODE 24-2014

**Filed with Sec. of State:** 6-24-2014

**Certified to be Effective:** 6-24-14

**Notice Publication Date:** 5-1-2014

**Rules Adopted:** 581-018-0500, 581-018-0503, 581-018-0506, 581-018-0509, 581-018-0512, 581-018-0515

**Subject:** Establish a Culturally Responsive Pedagogy and Practices Grant program as one of the methods to address initiatives in HB 3233. The purpose of the grant program is to support school districts, postsecondary institutions and non-profit organizations in closing opportunity gaps for culturally and/or linguistically diverse learners through culturally responsive pedagogy and practices.

**Rules Coordinator:** Cindy Hunt—(503) 947-5651

## 581-018-0500

### Definitions

The following definitions apply to OAR 581-018-0500 to 581-018-0515:

(1) "Achievement gap" means the research-based gap in opportunity that often exists between students who are economically disadvantaged, students learning English as a second language and students who are African American, Hispanic or Native American and their White peers.

(2) "Culturally responsive" means the implicit use of the cultural knowledge, prior experiences, frames of reference, and performance styles of diverse students to make learning more appropriate and effective for them.

(3) "Culturally Responsive Pedagogy and Practices Grant" means the Grant established in OAR 581-018-0205 to implement ORS 342.950(3)(f).

(4) "Culturally Relevant" means pedagogy and practices that propose the following: students must experience academic success, students must develop and/or maintain cultural competence, and students must develop a critical consciousness through which they challenge the status quo of the current social order.

(5) "Culturally and/or linguistically diverse" means: students who identify as racial and/or ethnically diverse (Hispanic, African American, Native American, Alaskan Native, Pacific Islander) or whose native language is not English.

(6) "Culturally competent" means the ability to successfully teach students who come from a culture or cultures other than our own. It entails developing certain personal and interpersonal awareness and sensitivities, understanding certain bodies of cultural knowledge, and mastering a set of skills that, taken together, underlie effective cross-cultural teaching and culturally responsive teaching.

(7) "Systemic Equity" means: the transformed ways in which systems and individuals habitually operate to ensure that every learner- in whatever learning environment that learner is found — has the greatest opportunity to learn enhanced by the resources and supports necessary to achieve competence, excellence, independence, responsibility, and self-sufficiency for school and for life.

(8) "Opportunity gap" means: the ways in which race, ethnicity, socioeconomic status, English proficiency, community wealth, familial situations, or other factors contribute to or perpetuate lower educational aspirations, achievement, and attainment for certain groups of students.

(9) "Pre-service teacher" means an individual who is enrolled in a post-secondary teacher preparation program at the undergraduate or graduate level working to obtain an initial teaching license.

Stat. Auth.: ORS 342.950

Stat. Implemented: ORS 342.950

Hist.: ODE 6-2014(Temp), f. & cert. ef. 2-19-14 thru 8-18-14; ODE 24-2014, f. & cert. ef. 6-24-14

# ADMINISTRATIVE RULES

## 581-018-0503

### Establishment

(1) There is established the Culturally Responsive Pedagogy and Practices Grant to support school districts and post-secondary educator preparation programs who are working to close achievement gaps for culturally and/or linguistically diverse learners through culturally responsive pedagogy and practices. The grants may be used to fund research based best practices which:

(a) Provide a critical opportunity for schools and institutions of higher education to address the social and academic needs of diverse students ; and

(b) Connect in-school experiences with out-of-school living, promote educational equity and excellence, and create a strong community among individuals from diverse cultural, social, and ethnic backgrounds while developing students' sense of agency, efficacy, and empowerment.

(2) Subject to available funds, the grants will be awarded for the biennium based on a detailed description of proposed programming or services. This can include but is not limited to:

- (a) Planning phase.
- (b) Implementation phase.

(3) The purpose of the grant program is to provide funds to school districts and post-secondary educator preparation programs that are focused on collaboration around culturally responsive professional development and pre-service teacher preparation. Outcomes of this work should be evident through teacher interactions with culturally and/or linguistically diverse learners and increased academic achievement for these students. This can include the following:

(a) Developing culturally responsive pedagogy and practice specific to closing the opportunity gap for Hispanic (Latino/a), African American, Asian American, Alaskan Native, American Native, and all other student populations of color;

(b) Connecting with students of color with special emphasis on the implementation of the Oregon Multicultural Education Act;

(c) Best practice in Education Equity;

(d) Strengthening ties between home, school, tribes, and larger communities;

(e) Post-secondary course work and field experiences concentrated on preparing pre-service teachers to demonstrate pedagogy and practices of a culturally responsive educator.

Stat. Auth.: ORS 342.950

Stat. Implemented: ORS 342.950

Hist.: ODE 6-2014(Temp), f. & cert. ef. 2-19-14 thru 8-18-14; ODE 24-2014, f. & cert. ef. 6-24-14

## 581-018-0506

### Eligibility

(1) To be eligible to receive the Culturally Responsive Pedagogy and Practices Grant an applicant must be a:

- (a) School district;
- (b) Public charter school;

(c) Consortium of school districts, public charter schools, non-profits organizations and/or post-secondary institutions; or

(d) Consortia may have the district, public charter school, non-profit organization or post-secondary institution serve as a lead agency for the grant.

(e) Post-secondary teacher preparation programs. Each post-secondary institution must have at least one school districts or public charter school as a partner.

(f) Non-profit organization. Each non-profit organization must have at least one school district, public charter and/or post-secondary institution as a partner.

(2) In addition to the entities listed in subsection (1) of this section consortia may also have additional partner entities.

Stat. Auth.: ORS 342.950

Stat. Implemented: ORS 342.950

Hist.: ODE 6-2014(Temp), f. & cert. ef. 2-19-14 thru 8-18-14; ODE 24-2014, f. & cert. ef. 6-24-14

## 581-018-0509

### Criteria

(1) The Oregon Department of Education shall establish a request for proposal solicitation and approval process to be conducted for the Culturally Responsive Pedagogy and Practices Grant funds. All proposals must comply with the requirements of section 1, chapter 661, Oregon Laws 2013 (Enrolled House Bill 3233) and rules adopted to implement that section.

(2) Grants shall be awarded based on the following criteria:

(a) Whether the grant application identifies how the funds will be used to reach the 40-40-20 goal and improve education outcomes for students of color and English learners as identified by the Oregon Education Investment Board Equity Lens document.

(b) Whether the grant applicant demonstrates commitment and readiness to use best practice around culturally responsive pedagogy and practice to close opportunity gaps for culturally and/or linguistically diverse learners.

(3) The Department shall give priority to proposals that meet the minimum criteria and:

(a) Provide a sustainability plan to continue the program for at least two years after the grant funding has ended.

(b) The extent to which the applicant clearly documents its capacity to design and implement preparation and/or professional development that focuses on culturally responsive pedagogy and practices that:

(A) Increase academic achievement, retention, and graduation rates for students of color;

(B) Increase student engagement and participation;

(C) Increase of the presence of culturally competent teachers and teaching;

(D) Strengthen the bond and communication between home, school, tribe, and the larger community;

(E) Effectively utilize the local community as an extension of the classroom learning environment;

(F) Use any exemplary multicultural curricula or strategies identified by the Department of Education pursuant to the Oregon Multicultural Act under ORS 336.113, as a guide for curriculum and development; and

(G) Implement professional development that is culturally responsive and extends throughout the entire school year;

(H) Revise course offerings and field experiences for pre-service teachers that explicitly prepares educators to implement culturally responsive teaching and practices.

(4) 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 applicants to insure geographic diversity within the recipients of grant program funds throughout the state;

(b) Applicants who demonstrate evidence of prior design/planning of a robust culturally responsive learning environment as a way to close achievement gaps for culturally and/or linguistically diverse learners;

(c) Applicants who have a high level of culturally and/or linguistically diverse learners, and those who experience economic disparities.

Stat. Auth.: ORS 342.950

Stat. Implemented: ORS 342.950

Hist.: ODE 6-2014(Temp), f. & cert. ef. 2-19-14 thru 8-18-14; ODE 24-2014, f. & cert. ef. 6-24-14

## 581-018-0512

### Funding

(1) Each grantee may apply for between \$50,000-\$200,00 in funding which shall be awarded during the following phases based on a detailed budget narrative and budget template:

(a) Planning phase;

(b) Implementation Phase.

(2) Grantees shall use funds received for the planning and implementation phases of the grant for activities outlined in the request for proposal.

(3) Grantees must be able to expend the funds for allowable purposes specified in the request for proposal within the grant timeline according to acceptable accounting procedures.

Stat. Auth.: ORS 342.950

Stat. Implemented: ORS 342.950

Hist.: ODE 6-2014(Temp), f. & cert. ef. 2-19-14 thru 8-18-14; ODE 24-2014, f. & cert. ef. 6-24-14

## 581-018-0515

### Reporting

The Oregon Department of Education shall provide to grant recipients a template for an interim and final grant report. Grantees are required to submit a final report prior to receiving their final request for funds.

Stat. Auth.: ORS 342.950

Stat. Implemented: ORS 342.950

Hist.: ODE 6-2014(Temp), f. & cert. ef. 2-19-14 thru 8-18-14; ODE 24-2014, f. & cert. ef. 6-24-14

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**Rule Caption:** Proficiency-Based Teaching and Learning Grant

**Adm. Order No.:** ODE 25-2014

**Filed with Sec. of State:** 6-24-2014

# ADMINISTRATIVE RULES

**Certified to be Effective:** 6-24-14

**Notice Publication Date:** 5-1-2014

**Rules Adopted:** 581-018-0431, 581-018-0434, 581-018-0437, 581-018-0440, 581-018-0443

**Subject:** Implement provisions of HB 3233 by establishing a Proficiency-Based Teaching and Learning Grant which will be available to school districts and nonprofits working with school districts. The goal of the grants is to support one to four demonstration sites.

**Rules Coordinator:** Cindy Hunt—(503) 947-5651

## 581-018-0431

### Definitions

The following definitions apply to OAR 581-018-0431 to 581-018-0443:

(1) “Non-profit organization” means:

(a) An organization established as a nonprofit organization under the laws of Oregon; and

(b) Qualifies as an exempt organization under section 501(c)(3) of the Internal Revenue Code as defined in ORS 314.011.

(2) “Proficiency-based teaching and learning” means a practice that is student-centered and based upon several key principles:

(a) Students learn in a personalized environment and advance upon demonstrated mastery of state, industry, or national standards;

(b) Measurable learning objectives are explicit and empower students;

(c) Student assessment is meaningful and a positive learning experience; and

(d) Students receive rapid, differentiated support and learning outcomes including applied learning.

Stat. Auth.: ORS 342.950

Stat. Implemented: ORS 342.950

Hist.: ODE 25-2014, f. & cert. ef. 6-24-14

## 581-018-0434

### Establishment

(1) The Proficiency-Based Teaching and Learning Grant is established to support proficiency-based teaching and learning demonstration sites. The purposes of the grant are:

(a) To inform proficiency-based teaching and learning practices in other school sites; and

(b) To develop new proficiency-based teaching and learning school sites in underserved regions in the state.

(2) Grants will fund eligible entities committed to developing sustainable proficiency-based teaching and learning programs in a school district or consortia of school districts with a strong commitment to improving student achievement and to providing demonstration sites for proficiency-based teaching and learning in the state.

Stat. Auth.: ORS 342.950

Stat. Implemented: ORS 342.950

Hist.: ODE 25-2014, f. & cert. ef. 6-24-14

## 581-018-0437

### Eligibility

(1) The following entities shall be eligible to receive Proficiency-Based Teaching and Learning Grants:

(a) School districts.

(b) Non-profit organizations working with at least one school district.

(2) A single grant proposal may include more than one eligible applicant and may also include other entities such as education service districts or post-secondary institutions, but the fiscal agent must be one of the eligible applicants identified in subsection (1) of this rule.

Stat. Auth.: ORS 342.950

Stat. Implemented: ORS 342.950

Hist.: ODE 25-2014, f. & cert. ef. 6-24-14

## 581-018-0440

### Implementation of Grant Funding

(1) The Oregon Department of Education shall establish a request for proposal solicitation and approval process to be conducted for the Proficiency-Based Teaching and Learning Grants. All proposals must comply with the requirements of section 1, chapter 661, Oregon Laws 2013 (Enrolled House Bill 3233) and rules adopted to implement that section.

(2) The Department may award up to two grants. Each grant shall support one to four demonstration sites within one or more school districts.

(3) To receive a grant an applicant must demonstrate a high level of support from school district boards and local education associations in all participating districts.

(4) The Department shall determine the amount of each grant based on the funds available for the grants and each grant application. The Department shall allocate funds for the grant program based on an evaluation of the grant application and whether the applicant has:

(a) Demonstrated a focus on district, state, and Common Core standards as the learning targets for which students will be held accountable;

(b) Defined levels of proficiency laid out on a learning continuum that is used to identify baseline ability and that reflects a range of continuous learning;

(c) Has experience and training expertise in coaching and supporting schools in proficiency or will utilize another entity with this expertise as a sub-contractor and partner;

(d) Identified sites in the application that are willing to serve as a demonstration sites for other school districts and a source of evidence of best practices and evidence-based models; and

(e) A plan that includes a strong outreach to parent and business communities to insure that those groups understand the shift to standards at a school site and what it means to support students in reaching proficient levels of knowledge and skills.

(5) 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 district to insure geographic diversity within the recipients of grant program funds throughout the state;

(b) Districts that have achievement gaps between subgroup populations; and

(c) Districts that have a high level of students who are economically disadvantaged.

Stat. Auth.: ORS 342.950

Stat. Implemented: ORS 342.950

Hist.: ODE 25-2014, f. & cert. ef. 6-24-14

## 581-018-0443

### Timelines and Performance Measures

The Oregon Department of Education shall provide award recipients a template for interim and final grant reports. Recipients are required to submit the interim and final report prior to receiving their final request for funds.

Stat. Auth.: ORS 342.950

Stat. Implemented: ORS 342.950

Hist.: ODE 25-2014, f. & cert. ef. 6-24-14

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**Rule Caption:** Oregon Minority Educator Pipeline Model Grant

**Adm. Order No.:** ODE 26-2014

**Filed with Sec. of State:** 6-24-2014

**Certified to be Effective:** 6-24-14

**Notice Publication Date:** 1-1-2014

**Rules Adopted:** 581-018-0401, 581-018-0406, 581-018-0411, 581-018-0416, 581-018-0421, 581-018-0425

**Subject:** The rules establish an Oregon Minority Educator Pipeline Models Grant program, the purpose of which is to support stakeholders to collaborate to expand models for recruiting and retaining educators who are culturally and/or linguistically diverse. The targeted outcome is to increase the number of education professionals (PK–12) who are non-White, Hispanic, or whose native language is not English. Key areas of focus for pipeline models to consider include K–12 students, career changers, returning veterans, and graduates from postsecondary historically Black institutions.

**Rules Coordinator:** Cindy Hunt—(503) 947-5651

## 581-018-0401

### Definitions

The following definitions apply to OAR 581-018-0401 to 581-018-0425:

(1) “Culturally and/or Linguistically Diverse” means individuals who are non-White, who are not native English speakers, and who are Hispanic.

(2) “Minority” means a person who is:

(a) A person having origins in any of the black racial groups of Africa but who is not Hispanic;

(b) A person of Hispanic culture or origin;

(c) A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands;

(d) An American Indian or Alaskan Native having origins in any of the original peoples of North America; or

(e) A person whose first language is not English.

# ADMINISTRATIVE RULES

(3) "Oregon Minority Educator Pipeline Models Grant" means the Grant established in OAR 581-018-0406 to implement section 1(3)(f), chapter 661, Oregon Laws 2013 (Enrolled House Bill 3233).

(4) "Pipeline Model" means the route through which future teachers are recruited, educated, hired, and retained in the education system.

(5) "Postsecondary Institution" means a:

(a) A community college operated under ORS chapter 341.

(b) The following public universities within the Oregon University System:

(A) University of Oregon.

(B) Oregon State University.

(C) Portland State University.

(D) Oregon Institute of Technology.

(E) Western Oregon University.

(F) Southern Oregon University.

(G) Eastern Oregon University.

(c) Oregon Health and Science University.

(d) An Oregon-based, generally accredited, not-for-profit institution of higher education.

(5) "Underrepresented" means populations in the United States who have been historically excluded from the same rights and privileges as the majority, White, culture. This applies to opportunity in education, business, and social aspects of society.

(6) "Recruitment" means the active, purposeful process of establishing effective and efficient systems that attract individuals to the teaching profession.

(7) "Retention" means the active, purposeful process of establishing effective and efficient systems that maintain the targeted recruitment population in the teaching profession.

Stat. Auth.: 2013 OL Ch. 661, Sec. 1 (Enrolled HB3233)

Stat. Implemented: 2013 OL Ch. 661, Sec. 1 (Enrolled HB3233)

Hist.: ODE 26-2014, f. & cert. ef. 6-24-14

## 581-018-0406

### Establishment

(1) There is established the Oregon Minority Educator Pipeline Models Grant to support school districts and post-secondary institutions who are working to expand educator pipeline models that recruit and retain educators who are culturally and/or linguistically diverse. Subject to available funds, the grants will be awarded for two years based on a detailed description of proposed programming or services. This can include but is not limited to:

(a) Planning phase.

(b) Implementation phase.

(c) Program evaluation phase.

(2) The purpose of the grant program is to provide funds to school districts and post-secondary institutions who can create collaborative processes around:

(a) Developing a statewide program with interested partners that provides free and/or low cost advising and academic supports to diverse educators;

(b) Formalizing partnerships with professional groups to leverage tutoring and internships;

(c) Volunteering experiences as a way of assisting future educators exploration of education related careers;

(d) Working with TeachOregon projects to develop, test, and expand improved job recruitment and retention practices that lead to a more diverse workforce in Oregon;

(e) Creating a high school cadet program or career pathway model for district employees to recruit future educators who are culturally and/or linguistically diverse;

(f) Allocating funding to provide financial support to future educators from underrepresented populations.

Stat. Auth.: 2013 OL Ch. 661, Sec. 1 (Enrolled HB3233)

Stat. Implemented: 2013 OL Ch. 661, Sec. 1 (Enrolled HB3233)

Hist.: ODE 26-2014, f. & cert. ef. 6-24-14

## 581-018-0411

### Eligibility

(1) To be eligible to receive the Oregon Minority Educator Pipeline Models Grant an applicant must be a:

(a) School district;

(b) Post-secondary institution;

(c) Consortium of school districts, post-secondary institutions and other entities (each consortium must include at least one school district or post-secondary institution as a member).

(2) A single grant proposal may include more than one eligible applicant, but the fiscal agent must be one of the eligible applicants identified in subsection (1) of this rule.

Stat. Auth.: 2013 OL Ch. 661, Sec. 1 (Enrolled HB3233)

Stat. Implemented: 2013 OL Ch. 661, Sec. 1 (Enrolled HB3233)

Hist.: ODE 26-2014, f. & cert. ef. 6-24-14

## 581-018-0416

### Criteria

(1) The Oregon Department of Education shall establish a request for proposal solicitation and approval process to be conducted for the Oregon Minority Educator Pipeline Models Grant funds. All proposals must comply with the requirements of section 1, chapter 661, Oregon Laws 2013 (Enrolled House Bill 3233) and rules adopted to implement that section.

(2) Grants shall be awarded based on the following criteria:

(a) Whether the grant application identifies how the funds will be used to reach the targeted outcomes and intent of the Oregon Teacher Corps and the Oregon Minority Teacher Act.

(b) Whether the grant applicant demonstrates readiness, commitment, and support to expand models of recruitment and retention for culturally and/or linguistically diverse educators.

(3) The Department shall give priority to proposals that meet the minimum criteria and:

(a) Provide a sustainability plan to continue the program for at least two years after the grant funding has ended.

(b) The extent to which the applicant clearly documents its capacity to implement and carry out purposeful system for recruiting a diverse student population, providing financial support to future educators, and collaborating with key partners in the process.

(4) 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 the district to insure geographic diversity within the recipients of grant program funds throughout the state;

(b) Applicants who have documented evidence of creating and maintaining successful minority educator pipeline models;

(c) Applicants who have a high level of potential teacher candidates (applicant pool) from diverse cultural and linguistic backgrounds; and

(d) Give preference to applicants that have demonstrated success in creating strong partnerships with community organizations support outcomes.

Stat. Auth.: 2013 OL Ch. 661, Sec. 1 (Enrolled HB3233)

Stat. Implemented: 2013 OL Ch. 661, Sec. 1 (Enrolled HB3233)

Hist.: ODE 26-2014, f. & cert. ef. 6-24-14

## 581-018-0421

### Funding

(1) Each grantee may receive \$180,000 which shall be awarded during the following phases based on a detailed budget narrative and budget template:

(a) Planning phase.

(b) Implementation phase.

(c) Evaluation phase.

(2) Grantees shall use funds received for the planning, implementation, and evaluation phases of the grant for activities outlined in the request for proposal.

(3) Grantees must be able to expend the funds for allowable purposes specified in the request for proposal within the grant timeline according to acceptable accounting procedures.

Stat. Auth.: 2013 OL Ch. 661, Sec. 1 (Enrolled HB3233)

Stat. Implemented: 2013 OL Ch. 661, Sec. 1 (Enrolled HB3233)

Hist.: ODE 26-2014, f. & cert. ef. 6-24-14

## 581-018-0425

### Reporting

The Oregon Department of Education shall provide to grant recipients a template for an interim and final grant report. Grantees are required to submit a final report prior to receiving their final request for funds.

Stat. Auth.: 2013 OL Ch. 661, Sec. 1 (Enrolled HB3233)

Stat. Implemented: 2013 OL Ch. 661, Sec. 1 (Enrolled HB3233)

Hist.: ODE 26-2014, f. & cert. ef. 6-24-14

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**Rule Caption:** Oregon Minority Educator Retention Grant

**Adm. Order No.:** ODE 27-2014

**Filed with Sec. of State:** 6-24-2014

**Certified to be Effective:** 6-24-14

**Notice Publication Date:** 1-1-2014

# ADMINISTRATIVE RULES

**Rules Adopted:** 581-018-0381, 581-018-0386, 581-018-0391, 581-018-0394, 581-018-0396, 581-018-0398

**Subject:** The rules establish an Oregon Minority Educator Retention Grant program as one of the methods to address the specific direction in HB 3233. Grants are competitive and award based. The targeted outcome is to increase the number of education professionals (PK–12) who are non-White, Hispanic, or whose native language is not English.

**Rules Coordinator:** Cindy Hunt—(503) 947-5651

## 581-018-0381

### Definitions

The following definitions apply to OAR 581-018-0380 to 581-018-0399:

(1) “Culturally and/or Linguistically Diverse” means individuals who are non-White, who are not native English speakers, and who are Hispanic.

(2) “Culturally Responsive (ness)” means using the cultural knowledge, prior experiences, and performance styles of diverse individuals to make learning and experiences more appropriate and effective for them; it teaches to and through the strengths of these individuals. (Adapted from Gay, 2000).

(3) “Minority” means a person who is:

(a) A person having origins in any of the black racial groups of Africa but who is not Hispanic;

(b) A person of Hispanic culture or origin;

(c) A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands;

(d) An American Indian or Alaskan Native having origins in any of the original peoples of North America; or

(e) A person whose first language is not English.

(4) “Oregon Minority Educator Retention Grant” means the Grant established in OAR 581-018-0285 to implement section 1(3)(f), chapter 661, Oregon Laws 2013 (Enrolled House Bill 3233).

(5) “Retention” means the active, purposeful process of establishing effective and efficient systems that maintain the targeted recruitment population in the teaching profession.

Stat. Auth.: OL Ch. 661, Sec. 1 (Enrolled HB 3233)

Stat. Implemented: OL Ch. 661, Sec. 1 (Enrolled HB 3233)

Hist.: ODE 27-2014, f. & cert. ef. 6-24-14

## 581-018-0386

### Establishment

(1) There is established the Oregon Minority Educator Retention Grant to support school districts who are working to design and implement retention models for educators who are culturally and/or linguistically diverse. Subject to available funds, the grants will be awarded for two years based on a detailed description of proposed programming or services. This can include but is not limited to:

(a) Planning phase.

(b) Implementation phase.

(2) The purpose of the grant program is to provide funds to school districts who can create collaborative processes around:

(a) Developing a culturally responsive interviewing model adaptable to a variety of settings in the P-20 structure using the OEIB Equity Lens to frame the work.

(b) Collaborating with local community based organizations to develop programs and events to create a welcoming environment for culturally and/or linguistically diverse new hires.

(c) Develop strong mentoring programs with particular attention to the needs of teachers who are culturally and/or linguistically diverse.

(d) Implement systems at the district level to check-in with staff who are culturally and/or linguistically diverse on the success of retention efforts and related needs.

(e) Create professional learning communities that support the development of district-wide cultural responsiveness.

Stat. Auth.: OL Ch. 661, Sec. 1 (Enrolled HB 3233)

Stat. Implemented: OL Ch. 661, Sec. 1 (Enrolled HB 3233)

Hist.: ODE 27-2014, f. & cert. ef. 6-24-14

## 581-018-0391

### Eligibility

(1) To be eligible to receive the Oregon Minority Educator Retention Grant an applicant must be:

(a) School districts.

(b) Consortium of school districts and other entities (each consortium must include at least one school district as a member).

(2) A single grant proposal may include more than one eligible applicant, but the fiscal agent must be a school district.

Stat. Auth.: OL Ch. 661, Sec. 1 (Enrolled HB 3233)

Stat. Implemented: OL Ch. 661, Sec. 1 (Enrolled HB 3233)

Hist.: ODE 27-2014, f. & cert. ef. 6-24-14

## 581-018-0394

### Criteria

(1) The Oregon Department of Education shall establish a request for proposal solicitation and approval process to be conducted for the Oregon Minority Educator Retention Grant funds. All proposals must comply with the requirements of section 1, chapter 661, Oregon Laws 2013 (Enrolled House Bill 3233) and rules adopted to implement that section.

(2) Grants shall be awarded based on the following criteria:

(a) Whether the grant application identifies how the funds will be used to reach the targeted outcomes and intent of the Oregon Teacher Corps and the Oregon Minority Teacher Act.

(b) Whether the grant applicant demonstrates readiness, commitment, and support to design and implement models of retention for culturally and/or linguistically diverse educators.

(3) The Department shall give priority to proposals that meet the minimum criteria and:

(a) Provide a sustainability plan to continue the program for at least two years after the grant funding has ended.

(b) Consider research-based best practice around minority educator retention models.

(4) 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 the district to insure geographic diversity within the recipients of grant program funds throughout the state;

(b) Organizations who have documented evidence of creating and maintaining successful minority educator retention models;

(c) Organizations who have a high level of potential teacher candidates (applicant pool) from diverse cultural and linguistic backgrounds; and

(d) Give preference to entities that have demonstrated success in creating strong partnerships with community organizations to support outcomes.

Stat. Auth.: OL Ch. 661, Sec. 1 (Enrolled HB 3233)

Stat. Implemented: OL Ch. 661, Sec. 1 (Enrolled HB 3233)

Hist.: ODE 27-2014, f. & cert. ef. 6-24-14

## 581-018-0396

### Funding

(1) Up to five school district grant awards will be given as follows: \$10,000 in Year One and \$25,000 in year two which shall be awarded during the following phases based on a detailed budget narrative and budget template:

(a) Planning phase.

(b) Implementation phase.

(2) Grantees shall use \$10,000 awards for design grants and \$25,000 awards to plan, develop, and pilot district models.

(3) Grantees must be able to expend the funds for allowable purposes specified in the request for proposal within the grant timeline according to acceptable accounting procedures.

Stat. Auth.: OL Ch. 661, Sec. 1 (Enrolled HB 3233)

Stat. Implemented: OL Ch. 661, Sec. 1 (Enrolled HB 3233)

Hist.: ODE 27-2014, f. & cert. ef. 6-24-14

## 581-018-0398

### Reporting

The Oregon Department of Education shall provide to grant recipients a template for an interim and final grant report. Grantees are required to submit a final report prior to receiving their final check for funds.

Stat. Auth.: OL Ch. 661, Sec. 1 (Enrolled HB 3233)

Stat. Implemented: OL Ch. 661, Sec. 1 (Enrolled HB 3233)

Hist.: ODE 27-2014, f. & cert. ef. 6-24-14

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**Rule Caption:** Support for Small/Rural Districts

**Adm. Order No.:** ODE 28-2014

**Filed with Sec. of State:** 6-24-2014

**Certified to be Effective:** 6-24-14

**Notice Publication Date:** 5-1-2014

**Rules Adopted:** 581-018-0327, 581-018-0330, 581-018-0333, 581-018-0336

**Subject:** The Small/Rural Districts Initiative addresses the unique needs of rural schools and districts, supporting districts in creating

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and implementing systems that focus on improving educator practice and high educational outcomes for students as described in the Network for Quality Teaching and Learning (HB 3233).

**Rules Coordinator:** Cindy Hunt—(503) 947-5651

## 581-018-0327

### Definitions

The following definitions apply to 581-018-0327 to 581-018-0336

(1) “Common Core State Standards (CCSS)” means a coherent progression of learning expectations in English language arts and mathematics designed to prepare K–12 students for college and career success. CCSS were adopted by the Oregon State Board of Education in 2010.

(2) “Educator Effectiveness” means expectations for educators defined by the Core Teaching Standards established in Senate Bill 290 to improve student academic growth. Teacher effectiveness is defined by the Model Core Teaching Standards and administrator effectiveness is defined by the Oregon Educational Leadership/Administrator Standards adopted by the State Board of Education.

(3) “Network” means the Network of Quality Teaching and Learning established by ORS 342.950.

Stat. Auth.: ORS 342.950

Stats. Implemented: ORS 342.950

Hist.: ODE 5-2014(Temp), f. & cert. ef. 2-19-14 thru 8-18-14; ODE 28-2014, f. & cert. ef. 6-24-14

## 581-018-0330

### Purpose and Eligibility

(1) The Oregon Department of Education shall establish a noncompetitive grant to support small/rural districts in implementing the Common Core State Standards and improving Educator Effectiveness.

(2) The Department shall determine eligible school districts for the grant based whether the district meets both the size and rural designation criteria.

(3) The Oregon Department of Education shall determine each biennium when the Small/Rural Grant Funds are available and which school districts are eligible to receive funds. The Department shall notify eligible districts of the application process and the due dates, and make available necessary guidelines and application forms.

(4) The Department shall distribute funds to eligible districts based on the following rural and size designation:

(a) Rural Designation:

(A) “County Designation” means a county designated by the US Census Bureau as either Rural, Micropolitan or Metropolitan.

(B) “Rural” means a district designated by the US Census Bureau as being located outside of an city or its urban fringe area for statistical purposes.

(C) “District Designation” means the label assigned to the district depending the county it is located in where it is defined as Rural (e.g. Micropolitan county-rural).

(b) Size Designation:

(A) “Very Small District” means a district whose ADMr is 1–499.

(B) “Small District” means a district whose ADMr is 500–1,000.

(C) “Mid-Size District” means a district whose ADMr is 1,001–2,200.

Stat. Auth.: ORS 342.950

Stats. Implemented: ORS 342.950

Hist.: ODE 5-2014(Temp), f. & cert. ef. 2-19-14 thru 8-18-14; ODE 28-2014, f. & cert. ef. 6-24-14

## 581-018-0333

### Funding

The Department of Education shall determine the amount of funds available to an eligible district based on the district’s size and rural county designation.

Stat. Auth.: ORS 342.950

Stats. Implemented: ORS 342.950

Hist.: ODE 5-2014(Temp), f. & cert. ef. 2-19-14 thru 8-18-14; ODE 28-2014, f. & cert. ef. 6-24-14

## 581-018-0336

### Reporting

(1) Districts shall meet timelines, performance measures and other requirements related to the accumulation and evaluation of data collected as required by the Oregon Investment Board and the Oregon Department of Education.

(2) Districts shall submit interim and final grant reports describing progress toward grant requirements and goals as defined by the Department of Education.

Stat. Auth.: ORS 342.950

Stats. Implemented: ORS 342.950

Hist.: ODE 5-2014(Temp), f. & cert. ef. 2-19-14 thru 8-18-14; ODE 28-2014, f. & cert. ef. 6-24-14

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**Rule Caption:** Eastern Promise Replication Grant

**Adm. Order No.:** ODE 29-2014

**Filed with Sec. of State:** 6-24-2014

**Certified to be Effective:** 6-24-14

**Notice Publication Date:** 5-1-2014

**Rules Adopted:** 581-017-0350, 581-017-0353, 581-017-0356, 581-017-0359, 581-017-0362

**Subject:** Implements provisions of HB 3232 by promoting collaboration among education institutions to replicate Eastern Promise, an evidence-based model and best practice that is likely to improve student outcomes. The program creates opportunities for high school students to participate in college-level courses and earn college credits and/or certificates, while still in high school, as well as build a college-going culture and attitudes through programs that begin serving students and families as early as 5th grade.

**Rules Coordinator:** Cindy Hunt—(503) 947-5651

## 581-017-0350

### Definitions

The following definitions apply to OAR 581-017-0350 to 581-017-0362:

(1) “Consortium” means the equal partnership developed to form the cross-sector collaboration between eligible educational institutions.

(2) “Proximity” means the four-year institution participating in the program will have a branch campus located within 150 miles of their community college partners’ regional borders.

(3) “Private post-secondary institution” means” an Oregon-based, generally accredited, not-for-profit institution of higher education.

(4) “Public post-secondary institution” means:

(a) The following public universities within the Oregon University System:

(A) University of Oregon.

(B) Oregon State University.

(C) Portland State University.

(D) Oregon Institute of Technology.

(E) Western Oregon University.

(F) Southern Oregon University.

(G) Eastern Oregon University.

(b) Oregon Health and Science University.

(5) “Significant population” means to serve the majority of underserved students within the consortiums region.

(6) “Underserved student” means a student (English language learner, student of color, an economically disadvantaged student or a student with disabilities) who has not historically taken high school accelerated courses and may not have considered enrolling in a post-secondary education program.

(7) “Variety” means students having access to a choice of courses offered in core academic subjects, in different forums (which include yet are not limited to distance learning, high school campus, college campus, by proficiency assessment or through credit for prior learning), that are eligible for transfer.

Stat. Auth.: ORS 327.800

Stat. Implemented: ORS 327.820

Hist.: ODE 3-2014(Temp), f. & cert. ef. 2-19-14 thru 8-17-14; ODE 29-2014, f. & cert. ef. 6-24-14

## 581-017-0353

### Eastern Promise Replication Grant Program Establishment

(1) The Eastern Promise Replication Grant is established as part of the Connecting the World to Work Program Strategic Investment under ORS 327.820.

(2) The purposes of the grant are to:

(a) Connect students to the World of Work;

(b) Develop consortiums of school districts, education service districts and post-secondary institutions of higher education committed to developing innovative and flexible pathways for students in grades 6 through 12 and in community colleges; and

(c) Distribute moneys to consortiums that include at least three school districts, at least one education service district, at least one community college and at least one public or private post-secondary institution to design and deliver individualized, innovative and flexible ways of delivering content, awarding high school and college credit and providing development

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education for students in high school or in the first two years of post-secondary education.

Stat. Auth.: ORS 327.800  
Stat. Implemented: ORS 327.820  
Hist.: ODE 3-2014(Temp), f. & cert. ef. 2-19-14 thru 8-17-14; ODE 29-2014, f. & cert. ef. 6-24-14

## 581-017-0356

### Eligibility

The Department of Education shall allocate funds for the Eastern Promise Replication Program grant to consortiums that consist of at least three school districts, at least one education service district, at least one community college and at least one public or private post-secondary institution.

Stat. Auth.: ORS 327.800  
Stat. Implemented: ORS 327.820  
Hist.: ODE 3-2014(Temp), f. & cert. ef. 2-19-14 thru 8-17-14; ODE 29-2014, f. & cert. ef. 6-24-14

## 581-017-0359

### Implementation of Grant Funding

(1) The Department of Education will make awards between \$465,000 and \$650,000 (adjusted by justifiable need) for use during the 2014–2015 school year for replication of the Eastern Promise program.

(2) The Oregon Department of Education shall establish a request for proposal solicitation and approval process to be conducted for the Eastern Promise Replication program funds. All proposals will comply with the requirements of ORS 327.800 and 327.820(3)(a)(D) and rules adopted to implement those sections.

(3) Awards will be based on the following criteria:

(a) Whether the proposal identifies how the funds will be used to reach the 40-40-20 goal by replicating the core pillars of Eastern Promise early college experiences and Professional Learning Communities.

(b) Whether the applicant proposal demonstrates support, commitment and readiness to design or revise programming specifically for offering early college experiences and developing Professional Learning Communities.

(c) Whether there is a commitment to cross-sector collaboration between a university, community college(s), education service district(s), and districts where each partner is engaged as an equal partner.

(d) Whether there is a commitment to providing students with a variety of accelerated learning opportunities, such as on-campus experiences, dual credit, Advanced Placement, International Baccalaureate, and to ensuring students receive support and specific instruction around the knowledge, skills and behaviors necessary to be successful in college-level coursework.

(e) Whether there is a commitment to developing cross-sector professional learning, including faculty and teachers from the university, community college and ESD/high schools of like disciplines. The consortium will ensure that all levels of instruction are represented and participate in discussing and establishing the appropriate curriculum, and in developing appropriate and shared assessment parameters to measure outcomes.

(f) Whether there is a commitment to building a college-going culture, which refers to the environment, attitudes, and practices in schools and communities that encourage students and their families to obtain the information, tools, and perspective to enhance access to and success in postsecondary education. The applicant should describe a plan for one or more programs servicing students, beginning in middle grades, that:

(A) Helps students learn about options for their future, careers and the education they require;

(B) Convey the expectation that all students can prepare for the opportunity to attend and be successful in post-secondary education; and

(C) Ensure schools, families, and communities give students the same message of high expectations for their future.

(4) The Department shall give priority to proposals that meet the minimum criteria and:

(a) Provide a sustainability plan to continue the program for at least two years after the program funding has ended.

(b) The extent to which the applicant clearly documents its capacity to implement and carry out programming to replicate pillars of the Eastern Promise program.

(5) The Department of Education shall allocate funds for the grant program based on the evaluation of the grant application and the following considerations:

(a) Programs representing the core pillars of the Eastern Promise Early College Experience.

(b) Programs that exhibit innovative and flexible ways of delivering content, awarding high school and college credit and providing development education for students in high school or in the first two years of post-secondary education.

(c) The number of students the Early College Experience program will serve.

(d) Programs with a detailed process to identify, enroll, support and retain underserved students.

(e) Programs that have a high level of underserved students who historically have not taken high school accelerated courses.

(f) Geographic locations of the program organization to ensure geographic representation of the targeted student groups are included throughout the state.

(6) Each award may be between \$465,000 and \$650,000 which shall be given during the following phases based on a detailed budget narrative and budget template:

(a) Planning and Implementation phase

(b) Evaluation phase.

(7) Grant recipients shall use funds received for the planning, implementation, and evaluation phases of the grant for activities outlined in the request for proposal.

(8) Grant recipients must be able to expend the funds for allowable purposes specified in the request for proposal within the grant timeline according to acceptable accounting procedures by June 30, 2015.

(9) Grant recipients will document and account for each student enrolled in and completing accelerated college courses before the final distribution of grant funds.

Stat. Auth.: ORS 327.800  
Stat. Implemented: ORS 327.820  
Hist.: ODE 3-2014(Temp), f. & cert. ef. 2-19-14 thru 8-17-14; ODE 29-2014, f. & cert. ef. 6-24-14

## 581-017-0362

### Timelines and Performance Measures

The Eastern Promise program shall provide award recipients a template for an interim and final grant report. Recipients are required to submit the interim and final report prior to receive their final request for funds.

Stat. Auth.: ORS 327.800  
Stat. Implemented: ORS 327.820  
Hist.: ODE 3-2014(Temp), f. & cert. ef. 2-19-14 thru 8-17-14; ODE 29-2014, f. & cert. ef. 6-24-14

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**Rule Caption:** Connecting to the World of Work - STEM, STEAM and CTE

**Adm. Order No.:** ODE 30-2014

**Filed with Sec. of State:** 6-24-2014

**Certified to be Effective:** 6-24-14

**Notice Publication Date:** 1-1-2014

**Rules Adopted:** 581-017-0301, 581-017-0306, 581-017-0309, 581-017-0312, 581-017-0315, 581-017-0318, 581-017-0321, 581-017-0324, 581-017-0327, 581-017-0330, 581-017-0333

**Subject:** Under the Connecting to the World of Work Program, funds were designed for the purpose of distributing moneys to school districts, postsecondary institutions and student-focused nonprofit organizations to create or expand Regional STEM Hubs for the advancement of STEM education and providing science, technology, engineering, art and mathematics (STEAM) and career and technical education (CTE) programs and/or activities and opportunities for all students in both formal and informal educational settings.

**Rules Coordinator:** Cindy Hunt—(503) 947-5651

## 581-017-0301

### Definitions

The following definitions apply to 581-017-0300 TO 581-017-0332:

(1) “Achievement Gap” means the gap in achievement (state test scores in science and mathematics as well as postsecondary degree attainment in STEM) that often exists between students who are economically disadvantaged, students learning English as a second language, African American, Hispanic or Native American compared to their peers.

(2) “Authentic Problem-Based Learning” means using real world questions, problems, and tasks—often drawn from local community issues and industries—as the focus to drive the learning experiences, deepen understanding, and developing rich contextual connections across a variety of STEM and non-STEM disciplines.

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(3) “Career and Technical Education (CTE)” is a comprehensive educational program for students based on industry needs. CTE includes coursework in areas such as health care, engineering, and computer science.

(4) “Community Engagement” means a broad collaboration and participation between multiple sectors of the community for the mutually beneficial exchange of knowledge and resources to identify local needs and contribute to larger conversations on visioning planning which may include, but not limited to parent groups and advocacy groups, industry and STEM agencies, economic and workforce groups, student input, and educators.

(5) “Effective STEM Instruction” means the use of evidence-based practices that support interconnected, relevant STEM instruction as stated in definition number one.

(6) “Effective STEM Leadership” means identifying schools, school districts, postsecondary institutions, business & industry, student-focused nonprofits and community leadership to support implementing and improving STEM teaching and learning in addition to creating a culture that fosters STEM learning with evidence-based resources. Effective STEM leadership develops an understanding of what effective and interconnected STEM education looks like in the classroom and supports the development of learning environments that empower educators to implement innovative STEM education approaches.

(7) “Effective STEM Learning Environments” means supporting student interaction with STEM education during formal and informal settings in ways that promote deeper understanding of real-world complex concepts. Such learning environments need to engage all students in solving complex problems, using highly interactive learning opportunities that create new opportunities for STEM learning across the core curriculum.

(8) “Equity Lens” refers to the commitment and principles adopted by the Oregon Education Investment Board to address inequities of access, opportunity, interest, and attainment for underserved and underrepresented populations in all current and future strategic investments.

(9) “Postsecondary Institution” means a:

(a) A community college operated under ORS Chapter 341.

(b) The following public universities within the Oregon University System:

(A) University of Oregon.

(B) Oregon State University.

(C) Portland State University.

(D) Oregon Institute of Technology.

(E) Western Oregon University.

(F) Southern Oregon University.

(G) Eastern Oregon University.

(c) Oregon Health and Science University.

(d) An Oregon-based, generally accredited, not-for-profit institution of higher education.

(10) “Regional STEM Hub” means a commitment of a group of key stakeholders from different sectors such as, but not limited to school districts, informal education providers, postsecondary institutions, business & industry, student-focused nonprofits, students, families, community members and policy makers to advance state and local educational goals related to science, technology, engineering, mathematics and career & technical education (CTE).

(11) “Statewide STEM Network” means a supportive collaboration between and across Regional STEM Hubs to share knowledge, expertise, insights, and leadership to assist other communities in their efforts to create similar STEM partnerships.

(12) “STEM Education” means an approach to teaching and lifelong learning that emphasizes the natural interconnectedness of the four separate STEM disciplines. Developing and deepening content knowledge and skills in science and mathematics is the foundation of STEM teaching and learning. The natural connections among science, mathematics and STEM are made explicit through collaboration between educators resulting in real and appropriate context built into instruction, curriculum, and assessment. The common element of problem solving is emphasized across all STEM disciplines allowing students to discover, explore, and apply critical thinking skills as they learn.

(13) “STEM Practitioners” refers to individuals engaged in STEM-related professions such as but not limited to, natural resources management, high-tech manufacturing and product development, information technology, industrial design, health sciences, software, scientific research, engineering, data analytics, etc.

(14) “Student-Focused Nonprofits” means an organization that meets all of the following requirements:

(a) Is established as a nonprofit organization under the laws of Oregon;

(b) Qualifies as an exempt organization under section 501(c)(3) of the Internal Revenue Code as defined in ORS 314.011; and

(c) Is focused on providing services to students who’s goals or mission are focused on impacting and improving outcomes in STEM education.

(15) “Underserved Students” are students whom systems have placed at risk because of their race, ethnicity, English language proficiency, socioeconomic status, gender, sexual orientation, differently abled, or geographic location.

(16) “Underrepresented Students” in STEM are from demographic groups who’s representation in STEM fields and industries does not mirror regional and national focus populations specifically, women, African American, Native American, Hispanic and Pacific Islander students which systems have provided insufficient or inadequate balance of opportunity.

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

## 581-017-0306

### Establishment of Regional STEM Hubs

(1) The Regional STEM Hub Grant is established as part of the Connecting to the World of Work Program.

(2) The purposes of these Regional STEM Hubs includes, but is not limited to:

(a) Engage school districts, post-secondary institutions, student-focused nonprofit organizations, business and industry around common outcomes related to increasing students’ proficiency, interest, and attainment in science, technology, engineering and mathematics along with career and technical education.

(b) Align STEM program activities and leverage State and local resources, both financial and human, around common student outcomes to advance the State 40/40/20 goals.

(c) Address ongoing access, opportunity, interest, and attainment gaps for underserved and underrepresented students in STEM consistent with the Equity Lens.

(d) Engage local communities to elevate the importance of STEM to the prosperity of individuals, and the local and state economy.

(e) Promote effective instructional practices by providing professional learning opportunities and to support educators in ways that are consistent with the implementation of the Common Core State Standards and Oregon Science Standards.

(f) Provide age-appropriate career exploration opportunities in STEM for students along the education continuum including career guidance, tours, and internships.

(g) Expand effective STEM learning experiences for students both in and out of school.

(h) Share knowledge, expertise, insights, and leadership to assist other communities in their efforts to create similar STEM partnerships.

(i) Foster greater coherency across institutions to smooth student transitions and support services along education and career pathways.

(j) Diminish the sense of academic isolation and silos, both locally and statewide.

(k) Increase interactions of STEM practitioners with students and educators.

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

## 581-017-0309

### Eligibility of Regional STEM Hubs

The Oregon Department of Education shall allocate funds for Regional STEM Hubs based on the following criteria:

(1) The following entities shall be eligible to be the fiscal agent for the Regional STEM Hub Grant:

(a) School districts,

(b) Student-focused nonprofit organizations, or

(c) Postsecondary institutions for the purpose of supporting STEM & CTE education.

(2) A Regional STEM Hub must be established by a school district, postsecondary institutions or student-focused nonprofit and is required to include the following additional partners at a minimum:

(a) A School District,

(b) A Postsecondary Education Partner,

(c) A Student-focused nonprofit; and

(d) An Industry, Business or STEM focused Community Partner.

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(3) A Regional STEM Hub must be able to demonstrate that the Hub has the following five key elements:

- (a) A common agenda;
- (b) Shared measurement systems;
- (c) Mutually reinforcing activities;
- (d) Continuous communication; and
- (e) Backbone support organizations.

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

## 581-017-0312

### Criteria of Regional STEM Hubs Awards

(1) The Oregon Department of Education shall establish a request for proposal solicitation and approval process to be conducted each biennium for which the Regional STEM Hub grant funds are available. All proposals must comply with the requirements of section 1, Chapter 661, Oregon Law 2013 (Enrolled House Bill 3232) and rules adopted to implement that section.

(2) The Oregon Department of Education may only award grants to Regional STEM Hubs which meet the minimum criteria by having a record of success in or clearly established plans for addressing the following:

(a) Each eligible recipient must establish a partnership for a Regional STEM Hub consisting of a school district, post-secondary, student-focused nonprofit, and industry, business.

(b) In creating a Regional STEM Hub, network leadership that has a plan to demonstrate the needs of ALL students and incorporate the principles of the Equity Lens adopted by the Oregon Education Investment Board.

(c) Regional STEM Hubs must identify a common agenda that contributes to the achievement of STEM to the State 40/40/20 goal and the STEM-related goals, which states by 2025 to:

(A) Double the percentage of students in 4th and 8th grades who are proficient or advanced in mathematics and science.

(B) Double the number of students who earn a post-secondary degree requiring proficiency in science, technology, engineering or mathematics.

(d) Regional STEM Hub Partnerships will be expected to:

(A) Participate in the development and dissemination of a minimum set of shared measurements and reporting of progress as determined by Oregon Department of Education in collaboration with the Oregon Education Investment Board

(B) Engage in mutually reinforcing activities for improving STEM/CTE education that will focus on instructional systems, communication, student support systems, human resource systems, and governance

(C) Engage in continuous communication both within and between Regional STEM Hubs

(D) Establish a backbone support organization to manage and support the Regional STEM Hub Partnership by serving the roles of project manager, data manager, communications hub and professional development facilitators.

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

## 581-017-0315

### Implementation of Grant Funding of Regional STEM Hubs

(1) The Oregon Department of Education shall allocate funds to support expanding and newly established Regional STEM Hubs.

(2) Each grantee may receive funds between \$100,000 to 750,000 which shall be distributed as followed:

(a) Phase 1 — Initial funding will be no more than 10 percent or \$25,000, whichever is higher, of the grant awarded amount.

(b) Phase 2 — Full funding will be released up to the awarded amount within six months of the date of the initial funding if the Oregon Department of Education, in collaboration with the Chief Education Officer or their STEM designee, determines that the grantee has established evidence of readiness.

(c) Evidence of readiness will consist of a business plan addressing the following:

(A) Formalized partnership agreements in place with commitments of human and financial resources.

(B) Agreed upon goals and common outcomes related to student, teacher and community needs, with particular attention to closing the achievement gap and furthering 40/40/20.

(C) Needs analysis related to student, teacher, and community challenges.

(D) Community profile of STEM-related programs, initiatives, and resources.

(E) Program implementation plan to address goals.

(F) Demonstrated leadership and capacity to implement grant.

(G) Evaluation plan to identify records of success and/or challenges.

(H) Plan for sustaining partnership and activities beyond the funding period.

(I) Commitment to participating and supporting the statewide STEM Network.

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

## 581-017-0318

### Reporting of Regional STEM Hubs

The Department of Education shall develop partnership-reporting requirements for allocation of funds for implementation of Regional STEM Hubs as required by the Oregon Education Investment Board.

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

## 581-017-0321

### Establishment of STEAM & CTE Programs and Activities

(1) The STEAM & CTE Program and Activities Grant is established as part of the Connecting to the World of Work Program.

(2) The purpose of the STEAM & CTE Programs and Activities Grant is to:

(a) Engage school districts, public schools, post-secondary institutions, and student-focused nonprofit organizations to implement programs and activities that increase learning opportunities focused on Science, Technology, Engineering, Art-related industries and Mathematics (STEAM) and Career and Technical Education (CTE) to serve Oregon students.

(b) Address ongoing access, opportunity, interest and attainment gaps for underserved and underrepresented students in STEAM and CTE consistent with the Equity Lens and specifically from demographic groups who's representation in STEAM industries fields and industries does not mirror regional and national focus populations, especially women, African American, Native American, Hispanic and Pacific Islander students for which current programs have provided insufficient or inadequate balance of opportunity.

(c) Expand effective STEAM learning environments in both in-school and out-of-school by implementing innovative programs and activities to improve, enhance and enrich students' problem-solving capabilities that foster 21st century STEAM skills.

(d) Promote more effective STEAM and CTE instructional practices consistent with Common Core State Standards, Oregon State Science Standards and Oregon State Arts Standards.

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

## 581-017-0324

### Eligibility of STEAM and CTE Programs and Activities

The Oregon Department of Education shall allocate funds for the STEAM and CTE program and activities grant. The following entities are able to apply and shall be eligible as the fiscal agent for the STEAM and CTE Implementation Activities and Program Grant:

(1) School districts;

(2) Public schools;

(3) Student-focused nonprofit organizations; or

(4) Post-secondary institutions.

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

## 581-017-0327

### Criteria of STEAM & CTE Programs and Activities

(1) The Oregon Department of Education shall establish a request for proposal solicitation and approval process to be conducted each biennium for which the STEAM and CTE Program and Activities grant funds are available. All proposals must comply with the requirements of section 1, Chapter 661, Oregon Law 2013 (Enrolled House Bill 3232) and rules adopted to implement that section.

(2) Eligible school districts, public schools, student-focused nonprofit organizations, and post-secondary institutions will focus on STEAM education with a specific agenda that demonstrates a record of success or clearly established plans for addressing the following:

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(a) Closing the achievement gap for underserved students and those underrepresented in STEAM and CTE fields with innovative approaches.

(b) Support effective implementation of the Common Core State Standards, the Oregon State Science Standards and the Oregon State Arts Standards.

(c) Successfully move students along a P-20 STEAM workforce pathway.

(d) Engage All students in meaningful, authentic problem-based learning that will support the Oregon's 40-40-20 goal.

(3) Eligible school districts, public schools, student-focused nonprofit organizations and post-secondary institutions must have a comprehensive system for measuring students' quantitative and qualitative outcomes, provide documented data and ensure that the resources received will be used for STEAM and CTE program and activity implementation.

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

## 581-017-0330

### Implementation of Grant Funding of STEAM & CTE Programs and Activities

(1) The Oregon Department of Education shall allocate funds to support in-school and out-of-school STEAM and CTE programs and activities.

(2) Each grantee may receive funds between \$10,000 and \$250,000 for use during the 2013-2015 biennium.

(3) The Department of Education will award STEAM and CTE Programs and Activities Grants for the biennium distributed as follows:

(a) The Oregon Department of Education shall establish a request for proposal solicitation and approval process to be conducted for the STEAM and CTE Programs and Activities funds. All proposals will comply with the requirement of section 4, chapter 661, Oregon Laws 2013 (enrolled House Bill 3232) and rules adopted to implement that section.

(b) 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 STEAM & CTE programs and activities;

(C) Demonstrate a long-term sustainability plan;

(D) Collaborate with local business and industry partners or Regional

STEM Hubs

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

## 581-017-0333

### Reporting of STEAM and CTE Programs and Activities

The Department of Education shall develop partnership-reporting requirements for allocation of funds for implementation of STEAM and CTE Programs and Activities as required by the Oregon Investment Board.

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

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**Rule Caption:** Oregon STEM Lab School Grant

**Adm. Order No.:** ODE 31-2014

**Filed with Sec. of State:** 6-24-2014

**Certified to be Effective:** 6-24-14

**Notice Publication Date:** 5-1-2014

**Rules Adopted:** 581-017-0335, 581-017-0338, 581-017-0341, 581-017-0344, 581-017-0347

**Subject:** Implements grant within the strategic investments under HB 3232 to support STEM, STEAM and CTE focused organizations to close the achievement gap and raise student achievement.

**Rules Coordinator:** Cindy Hunt—(503) 947-5651

## 581-017-0335

### Definitions and Establishment of STEM Lab Schools

(1) The following definitions apply to 581-017-0335 TO 581-017-0347:

(a) "Achievement Gap" means the gap in achievement (state test scores in science and mathematics as well as postsecondary degree attainment in STEM) that often exists between students who are economically disadvantaged, students learning English as a second language, African American, Hispanic or Native American compared to their peers.

(b) "Authentic Problem-Based Learning" means using real world questions, problems, and tasks — often drawn from local community issues and industries — as the focus to drive the learning experiences, deepen understanding, and developing rich contextual connections across a variety of STEM and non-STEM disciplines.

(c) "Career and Technical Education (CTE)" is a comprehensive educational program for students based on industry needs. CTE includes coursework in areas such as health care, engineering, and computer science.

(d) "Community Engagement" means a broad collaboration and participation between multiple sectors of the community for the mutually beneficial exchange of knowledge and resources to identify local needs and contribute to larger conversations on visioning planning which may include, but not limited to parent groups and advocacy groups, industry and STEM agencies, economic and workforce groups, student input, and educators.

(e) "Effective STEM Instruction" means the use of evidence-based practices that support interconnected, relevant STEM instruction as stated in definition number fourteen.

(f) "Effective STEM Leadership" means identifying schools, school districts, postsecondary institutions, business & industry, student-focused nonprofits and community leadership to support implementing and improving STEM teaching and learning in addition to creating a culture that fosters STEM learning with evidence-based resources. Effective STEM leadership develops an understanding of what effective and interconnected STEM education looks like in the classroom and supports the development of learning environments that empower educators to implement innovative STEM education approaches.

(g) "Effective STEM Learning Environments" means supporting student interaction with STEM education during formal and informal settings in ways that promote deeper understanding of real-world concepts. Such learning environments must engage all students in solving complex problems, using highly interactive learning opportunities that create new opportunities for STEM learning across the core curriculum.

(h) "Equity Lens" refers to the commitment and principles adopted by the Oregon Education Investment Board to address inequities of access, opportunity, interest, and attainment for underserved and underrepresented populations in all current and future strategic investments.

(i) "Postsecondary Institution" means:

(A) A community college operated under ORS Chapter 341.

(B) The following public universities within the Oregon University System:

(i) University of Oregon.

(ii) Oregon State University.

(iii) Portland State University.

(iv) Oregon Institute of Technology.

(v) Western Oregon University.

(vi) Southern Oregon University.

(vii) Eastern Oregon University.

(viii) Oregon Health and Science University.

(C) An Oregon-based, generally accredited, not-for-profit institution of higher education.

(j) "Regional STEM Hub" means a commitment of a group of key stakeholders from different sectors such as, but not limited to school districts, informal education providers, postsecondary institutions, business & industry, student-focused nonprofits, students, families, community members and policy makers to advance state and local educational goals related to science, technology, engineering, mathematics and career & technical education (CTE).

(k) "School" means a public middle school, high school, community college, or postsecondary institution offering a comprehensive instructional program. A school may include a discreet comprehensive instructional program within a larger school or college.

(l) "Statewide STEM Network" means a supportive collaboration between and across Regional STEM Hubs to share knowledge, expertise, insights, and leadership to assist other communities in their efforts to create similar STEM partnerships.

(m) "STEAM Education" means the incorporation of strategies to enhance science, technology, engineering and mathematics (STEM) education by integrating art and design, and promoting creative possibilities.

(n) "STEM Education" means an approach to teaching and lifelong learning that emphasizes the natural interconnectedness of the four separate STEM disciplines which mirrors the practices and rich contexts of STEM practitioners. Developing and deepening content knowledge and skills in science and mathematics is the foundation of STEM teaching and learning.

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The natural connections among science, mathematics and STEM are made explicit through collaboration between educators resulting in authentic and appropriate context built into instruction, curriculum, and assessment. The common element of problem solving is emphasized across all STEM disciplines allowing students to discover, explore, and apply critical thinking skills as they learn.

(o) "STEM Lab School" means to establish a school that has a student-centered school culture of inquiry with meaningful and authentic learning environments that integrate STEM and/or STEAM education aligned with state, national and industry standards. This cutting-edge learning center will deepen connections between other educational institutions, business, industry, out-of-school educators, and the local community to create and promote STEM career pathways for students. An intentional focus of a lab school is to support the professional learning of current and future educators, the implementation of innovative education models, and educational research in a manner that increases knowledge and capacity of systems and institutions beyond the school itself.

(p) "STEM Practitioners" refers to individuals engaged in STEM-related professions such as but not limited to, natural resources management, high-tech manufacturing and product development, information technology, industrial design, health sciences, software, scientific research, engineering, data analytics, etc.

(q) "Student-Focused Nonprofits" means an organization that meets all of the following requirements:

(A) Is established as a nonprofit organization under the laws of Oregon;

(B) Qualifies as an exempt organization under section 501(c)(3) of the Internal Revenue Code as defined in ORS 314.011; and

(C) Is focused on providing services to students and/or educators who's goals or mission are focused on impacting and improving student outcomes in STEM education.

(r) "Underserved Students" are students whom systems have placed at risk because of their race, ethnicity, English language proficiency, socioeconomic status, gender, sexual orientation, differently abled, or geographic location.

(s) "Underrepresented Students" in STEM are from demographic groups whose representation in STEM fields and industries does not mirror regional and national focus populations specifically, women, African American, Native American, Hispanic and Pacific Islander students which systems have provided insufficient or inadequate balance of opportunity.

(2) The STEM Lab Schools Grant is established as part of the Connecting to the World of Work Program.

(3) The purpose of the STEM Lab School Grant is to:

(a) Engage middle school, high school and/or community college students in authentic, inquiry-based learning environments that increase experiential learning opportunities focused on Science, Technology, Engineering, and Mathematics (STEM) education and design-related industries to improve, enhance, and enrich students' problem-solving capabilities and to foster 21st Century Skills.

(b) Address ongoing access, opportunity, interest and attainment gaps for underserved and underrepresented students in STEM and design-related industries consistent with the Equity Lens.

(c) Promote more effective STEM and design-related industries instructional practices consistent with Common Core State Standards, Oregon State Science Standards and Oregon State Arts Standards by offering educator professional learning opportunities.

Stat. Auth.: ORS 327.800  
Stat. Implemented: ORS 327.820  
Hist.: ODE 2-2014(Temp), f. & cert. ef. 2-19-14 thru 8-17-14; ODE 31-2014, f. & cert. ef. 6-24-14

## 581-017-0338

### Eligibility of STEM Lab Schools

(1) The Oregon Department of Education may allocate funds for STEM Lab Schools to the following entities:

- (a) Public Schools;
- (b) School districts;
- (c) Student-focused nonprofit organizations; or
- (d) Postsecondary institutions for the purpose of supporting STEM education.

(2) A single grant proposal may include more than one eligible applicant and other entities but the lead agency for the proposal must be one of entities listed in subsection (1) of this rule.

Stat. Auth.: ORS 327.800  
Stat. Implemented: ORS 327.820  
Hist.: ODE 2-2014(Temp), f. & cert. ef. 2-19-14 thru 8-17-14; ODE 31-2014, f. & cert. ef. 6-24-14

## 581-017-0341

### Criteria of STEM Lab Schools

(1) The Oregon Department of Education shall establish a request for proposal solicitation and approval process to be conducted each biennium for which the STEM Lab School grant funds are available. All proposals must comply with the requirements of ORS 327.800 and 327.820 and rules adopted to implement those statutes.

(2) Eligible public schools, school districts, postsecondary institutions, and student-focused nonprofit organizations will focus on STEM education and design-related industry with a specific agenda that demonstrates a record of success or clearly established plans for addressing the following:

(a) Closing the achievement gap for underserved students and those underrepresented in STEM fields with innovative approaches.

(b) Support effective implementation of the Common Core State Standards, the Oregon State Science Standards and the Oregon State Arts Standards.

(c) Successfully move students along a P-20 STEM workforce pathway.

(d) Engage students in meaningful, authentic, problem-based learning that will support the Oregon's 40-40-20 goal.

(e) Provide professional learning opportunities that support educator effectiveness.

(3) Eligible public schools, school districts, student-focused nonprofit organizations, and post-secondary institutions must have a comprehensive system for measuring students' quantitative and qualitative outcomes, provide documented data and ensure that the resources received will be used to provide STEM career pathway opportunities to students.

Stat. Auth.: ORS 327.800  
Stat. Implemented: ORS 327.820  
Hist.: ODE 2-2014(Temp), f. & cert. ef. 2-19-14 thru 8-17-14; ODE 31-2014, f. & cert. ef. 6-24-14

## 581-017-0344

### Implementation of Grant Funding of STEM Lab Schools

(1) The Oregon Department of Education shall allocate funds to support STEM Lab Schools.

(2) Each grantee may receive funds between \$300,000 and \$700,000 for use during the 2013–2015 biennium.

Stat. Auth.: ORS 327.800  
Stat. Implemented: ORS 327.820  
Hist.: ODE 2-2014(Temp), f. & cert. ef. 2-19-14 thru 8-17-14; ODE 31-2014, f. & cert. ef. 6-24-14

## 581-017-0347

### Reporting of STEM Lab Schools

The Department of Education shall develop partnership-reporting requirements for allocation of funds for implementation of STEM Lab Schools as required by the Oregon Education Investment Board.

Stat. Auth.: ORS 327.800  
Stat. Implemented: ORS 327.820  
Hist.: ODE 2-2014(Temp), f. & cert. ef. 2-19-14 thru 8-17-14; ODE 31-2014, f. & cert. ef. 6-24-14

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### Rule Caption: Early Learning Professional Development Grant

Adm. Order No.: ODE 32-2014

Filed with Sec. of State: 6-24-2014

Certified to be Effective: 6-24-14

Notice Publication Date: 5-1-2014

Rules Adopted: 581-018-0575, 581-018-0578, 581-018-0581, 581-018-0584, 581-018-0587, 581-018-0590

Subject: Establishes grant to provide early learning professional development opportunities taking into account the unique needs of the workforce.

Rules Coordinator: Cindy Hunt—(503) 947-5651

## 581-018-0575

### Definitions

The following definitions apply to OAR 581-018-0575 to 581-018-0590:

(1) "Early Learning workforce" means those individuals employed in the provision of services to children who are zero through six years of age.

(2) "Equity Lens" means the Equity Lens adopted by the Oregon Education Investment Board and described in OAR 581-018-0010.

(3) "Non-profit organization" means:

(a) An organization established as a nonprofit organization under the laws of Oregon; and

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(b) Qualifies as an exempt organization under section 501(c)(3) of the Internal Revenue Code as defined in ORS 314.011.

(4) "Postsecondary Institution" means a:

(a) A community college operated under ORS Chapter 341.

(b) The following public universities within the Oregon University System:

(A) University of Oregon.

(B) Oregon State University.

(C) Portland State University.

(D) Oregon Institute of Technology.

(E) Western Oregon University.

(F) Southern Oregon University.

(G) Eastern Oregon University.

(c) Oregon Health and Science University.

(d) An Oregon-based, generally accredited, not-for-profit institution of higher education.

(5) "Underserved student" means a student (English language learner, student of color, an economically disadvantaged student or a student with disabilities) who has not historically considered enrolling in a post-secondary education program.

Stat. Auth. ORS 342.950

Stat. Implemented: ORS 342.950

Hist.: ODE 17-2014(Temp), f. & cert. ef. 3-28-14 thru 9-24-14; ODE 32-2014, f. & cert. ef. 6-24-14

## 581-018-0578

### Establishment

(1) There is established the Early Learning Professional Development Grant Program to implement ORS 342.950(3)(i).

(2) The Early Learning Professional Development Grant Program has the following purposes:

(a) To expand and scale up partnerships involving community colleges and undergraduate educator preparation programs at post-secondary institutions that are dedicated to creation of early childhood stackable and portable certificates, credentials, and degree programs that prepare more non-traditional dual language educators and that support more seamless transition from Associate of Arts (AA) to Bachelor of Arts (BA) completion.

(b) To scale up AA/BA degree programs that can flexibly meet the needs of the existing early childhood workforce and provide a comprehensive array of supports to individuals completing degrees in Early Childhood Education.

Stat. Auth. ORS 342.950

Stat. Implemented: ORS 342.950

Hist.: ODE 17-2014(Temp), f. & cert. ef. 3-28-14 thru 9-24-14; ODE 32-2014, f. & cert. ef. 6-24-14

## 581-018-0581

### Eligibility

(1) The following types of organizations may apply for funding:

(a) Post-secondary institutions;

(b) Non-profit organizations; and

(c) Providers of early learning services.

(2) A single grant proposal may include more than one eligible applicant, but the lead applicant must be one of the eligible applicants identified in subsection (1) of this rule.

(3) Each grant proposal must contain at least one post-secondary institution as a partner in the proposal.

Stat. Auth. ORS 342.950

Stat. Implemented: ORS 342.950

Hist.: ODE 17-2014(Temp), f. & cert. ef. 3-28-14 thru 9-24-14; ODE 32-2014, f. & cert. ef. 6-24-14

## 581-018-0584

### Criteria

(1) Applicants for grant funds must demonstrate a commitment and readiness to design or revise programming that address the following features:

(a) Transferability across post-secondary institutions;

(b) Provide direct support for students; and

(c) Program designed for underserved students.

(2) Priority for funding shall be given to applicants that have met the grant requirements along with the following considerations regarding communities to be served by the grant:

(a) Communities that have a high percentage of culturally or linguistically diverse young children;

(b) Communities that have a high percentage of culturally or linguistically diverse candidates in the local early childhood workforce;

(c) Location of the community to support geographic diversity among the recipients of grant program funds across the state.

(3) Consideration shall also be given to whether the grant application identifies how the funds will be used to improve education outcomes identified by the Oregon Education Investment Board, contained in achievement compacts or set forth in ORS 351.009.

Stat. Auth. ORS 342.950

Stat. Implemented: ORS 342.950

Hist.: ODE 17-2014(Temp), f. & cert. ef. 3-28-14 thru 9-24-14; ODE 32-2014, f. & cert. ef. 6-24-14

## 581-018-0587

### Funding

(1) The Department of Education shall determine for each fiscal year the portion of the funds available for the Early Learning Professional Development.

(2) Funds received under this section must be separately accounted for and may be used only to provide funding for the purposes described in the application of the grant recipient.

(3) The Department shall determine the amount of the grant based on the merits of the designed programs and alignment of the criteria.

Stat. Auth. ORS 342.950

Stat. Implemented: ORS 342.950

Hist.: ODE 17-2014(Temp), f. & cert. ef. 3-28-14 thru 9-24-14; ODE 32-2014, f. & cert. ef. 6-24-14

## 581-018-0590

### Reporting

Recipients of the Early Learning Professional Development grant funds must report on the grant to the Department of Education and Oregon Education Investment Board. The report must include:

(1) Evidence toward meeting defined outcomes as articulated in the grant; and

(2) Description of outputs and activities related to creation of Early Learning Professional Development program.

(3) Data related to the impact of the project on students, teachers and community partners. These data may include but are not limited to the following:

(a) Number of students enrolled in the program(s).

(b) Interviews or surveys conducted by Department staff or evaluators.

(c) Data on specific measures of teacher knowledge and skills related to project outcomes.

Stat. Auth. ORS 342.950

Stat. Implemented: ORS 342.950

Hist.: ODE 17-2014(Temp), f. & cert. ef. 3-28-14 thru 9-24-14; ODE 32-2014, f. & cert. ef. 6-24-14

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## Rule Caption: Interdistrict Student Transfer Agreements

**Adm. Order No.:** ODE 33-2014

**Filed with Sec. of State:** 6-24-2014

**Certified to be Effective:** 7-1-14

**Notice Publication Date:** 5-1-2014

**Rules Amended:** 581-021-0019

**Subject:** Prohibits districts from considering race, religion, sex, sexual orientation, ethnicity, national origin, disability, health, whether a student has an individualized education program, the terms of an individualized education program, income level, residence, proficiency in the English language, athletic ability, or academic records when giving consent to interdistrict transfer;

Clarifies which district is responsible for setting the length of consent and consenting to renewals;

Updates interdistrict transfer agreement requirements to comply with state law; and

Transfers responsibility for FAPE to receiving district.

**Rules Coordinator:** Cindy Hunt—(503) 947-5651

## 581-021-0019

### Interdistrict Transfer Agreement

(1) Definitions. As used in this rule:

(a) "ADM" means the average daily membership as defined in ORS 327.006.

(b) "Individualized education program" means a written statement of an educational program for a child with a disability that is developed, reviewed and revised in a meeting in accordance with criteria established

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by rules of the State Board of Education for each child eligible for special education and related services under ORS Chapter 343.

(c) "Interscholastic activities" includes but is not limited to athletics, music, speech, and other related activities.

(d) "Nonresident school district" means a school district that is not the resident school district of a child.

(e) "Person in parental relationship" means, as defined in ORS 339.133, an adult who has physical custody of a child or resides in the same household as the child, interacts with the child daily, provides the child with food, clothing, shelter and incidental necessities and provides the child with necessary care, education and discipline. "Person in parental relationship" does not mean a person with a power of attorney or other written delegation of parental responsibilities if the person does not have other evidence of a parental relationship.

(f) "Resident school district" means the school district that has a legal responsibility to educate a child because the child resides in the district with a parent, guardian or person in parental relationship.

(g) "School district" means a school district as defined in ORS 332.002, a state-operated school or any legally constituted combination of such entities.

(2)(a) Pursuant to ORS 339.127, a nonresident school district may enroll a student who is a resident of another district and receive State School Fund money for the student if there is a signed Interdistrict Transfer Agreement between the resident school district, nonresident school district, and the parent/guardian(s) or person in parental relationship.

(b) In determining whether to admit or release a student requesting inter-district transfer through a signed Interdistrict Transfer Agreement, or in establishing any terms of such consent, neither the resident district nor the nonresident district may consider race, religion, sex, sexual orientation, ethnicity, national origin, disability, health, whether a student has an individualized education program, the terms of an individualized education program, income level, residence, proficiency in the English language, athletic ability, or academic records.

(c) The provisions of this rule do not affect the authority of a school district to enroll students under section 9, chapter 718, Oregon Laws 2011 (Enrolled House Bill 3681) and do not apply to students who attend a school under that section.

(d) The provisions of this rule do not affect the authority of a school district to enter into a contract with another district under ORS 339.125.

(3) It is understood that upon approval by the district of the Interdistrict Transfer Agreement that:

(a) The Resident District shall fully release the student to the Nonresident District. The Nonresident District shall claim the student as a resident student for the purposes of claiming basic school support under the State School Fund and shall report itself as the Resident District of record for ADM purposes.

(b) The Nonresident District shall report the student as a resident student for ADM per ORS 339.133. The Resident District turns over to the Nonresident District all portions of the ADMr and the ADMw that is paid from the State School Fund. Funds may only be exchanged between the districts for the student based on the Interdistrict Transfer Agreement.

(c) The Nonresident District will be accountable for meeting the requirements of the standards described in OAR chapter 581, division 22.

(d) The Nonresident District will be accountable for ensuring a free, appropriate public education (FAPE) in the least restrictive environment (LRE) for students on an Individualized Education Program (IEP).

(4) Modification to the original Interdistrict Transfer Agreement requires written consent by the nonresident school district and parent/guardian or person in parental relationship.

(5)(a) A district considering whether to admit a nonresident student through interdistrict transfer may only request the following information prior to admitting the student:

(A) Legal Name;

(B) Date of Birth;

(C) Enrolled Grade;

(D) Primary Phone Number of Parent/Guardian/Person of Parental Relationship;

(E) Primary Email of Parent/Guardian/Person of Parental Relationship;

(F) Mailing Address of Parent/Guardian/Person of Parental Relationship; and

(G) Information on any student expulsions within the last calendar year;

(b) A district considering whether to admit a nonresident student through interdistrict transfer may not request information on the student's

race, religion, sex, sexual orientation, ethnicity, national origin, disability, health, whether a student has an individualized education program, the terms of an individualized education program, income level, residence, proficiency in the English language, athletic ability, or academic records.

(6) The Oregon Department of Education (ODE) will provide a sample Interdistrict Transfer Agreement form. Resident school districts are responsible for developing their own written instructions.

(7) An Interdistrict Transfer Agreement shall only be between districts within the state of Oregon.

(8) Upon request by the nonresident district, a resident district shall release student records to the nonresident district.

(9) Nothing in this rule prevents a district school board from exercising the authority granted to the district under ORS 339.127(9).

Stat. Auth.: ORS 326.051

Stats. Implemented: ORS 339.133

Hist.: ODE 21-2008, f. 8-28-08, cert. ef. 8-29-08; ODE 1-2012, f. 2-1-12, cert. ef. 2-3-12; ODE 33-2014, f. 6-24-14, cert. ef. 7-1-14

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**Rule Caption:** Administration of State Assessments

**Adm. Order No.:** ODE 34-2014

**Filed with Sec. of State:** 6-24-2014

**Certified to be Effective:** 6-24-14

**Notice Publication Date:** 5-1-2014

**Rules Amended:** 581-022-0610

**Subject:** Updates rule to reflect implementation of the Smarter Balanced mathematics and English language arts (ELA) assessments as well as the Kindergarten Assessment. Adopts accessibility terminology and definitions used by the Smarter Balanced Assessment Consortium and applies to the Oregon Statewide Assessment System.

**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.

(i) "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

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- (ii) English Language Arts (ELA)
- (C) The English Language Proficiency Assessment (ELPA); and
- (D) The Extended Assessment in:
  - (i) Reading/Literature;
  - (ii) Mathematics;
  - (iii) Science;
  - (iv) Writing;
  - (E) The Kindergarten Assessment
- (j) "Reset" means the removal of student responses from the web-based testing application for a given testing event for which the student may retest.
- (k) "School building" means facilities owned, leased, or rented by a school district, educational service district, public charter school, private school, or private alternative program.
  - (l) "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.
  - (m) "School test coordinator" (STC) means school personnel who provide comprehensive training to test administrators and monitor the testing process.
  - (n) "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.
  - (o) "Test administrator" (TA) means an individual trained to administer the Oregon Statewide Assessments in accordance with the Test Administration Manual.
  - (p) "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 which 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 separately for each content area to be assessed 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

# ADMINISTRATIVE RULES

**Rule Caption:** Long-Term Care and Treatment Education Programs - Transportation of Students

**Adm. Order No.:** ODE 35-2014

**Filed with Sec. of State:** 6-27-2014

**Certified to be Effective:** 6-27-14

**Notice Publication Date:** 2-1-2014

**Rules Amended:** 581-015-2574

**Subject:** Based on 2013 legislation, the rule amendments direct resident school districts to provide transportation to students in LTCT programs each day the student receives services. The district may claim reimbursement for transportation costs from the State School Fund only when the student receives education services.

**Rules Coordinator:** Cindy Hunt—(503) 947-5651

**581-015-2574**

**Resident District Obligations for Students in Long-Term Care and Treatment (LTCT) Education Programs**

(1) The resident district must provide or pay for the daily transportation to and from a Psychiatric Day Treatment Program in which a student placed by a public entity, private entity or by the student's parent is enrolled as follows:

(a) The resident district may directly transport or contract for transportation services with the agency, an adjacent school district, an education service district or a private carrier as long as the subcontractor is operating under the provision of ORS 801.455, 801.460, and 820.100 through 820.150, or is exempt from these regulations by operating under the Public Utility Commission, ORS Chapter 767, or city regulations included in ORS Chapter 221.

(b) Subject to agreement with the parent or guardian, the resident district may reimburse a parent or guardian for the transportation of a child at the per mile rate established by that district.

(c) Transportation must be provided by the resident district each day the student is scheduled to receive services from the eligible day treatment program.

(2) The resident district may claim reimbursement OAR 581-023-0040 for transportation costs incurred while transporting the student only when the student receives education services at the eligible day treatment program.

(3) The resident district must participate in all individualized education program or personalized education plan meetings involving its students.

Stat. Auth. ORS 326.051, 327.006, & 343.961

Stats. Implemented: ORS 343.961

Hist.: ODE 14-2009, f. & cert. ef. 12-10-09; ODE 15-2011, f. & cert. ef. 12-15-11; ODE 35-2014, f. & cert. ef. 6-27-14

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**Rule Caption:** Long-Term Care & Treatment Education Program

**Adm. Order No.:** ODE 36-2014

**Filed with Sec. of State:** 6-27-2014

**Certified to be Effective:** 6-27-14

**Notice Publication Date:** 2-1-2014

**Rules Amended:** 581-015-2571

**Subject:** Changes references to Addictions and Mental Health Division standards rule.

**Rules Coordinator:** Cindy Hunt—(503) 947-5651

**581-015-2571**

**Long-Term Care and Treatment (LTCT) Education Program Eligibility and Approval**

(1) The Department of Education shall base education program eligibility on the following:

(a) An agency may offer several different treatment programs serving different populations. For the purposes of determining eligibility for funding and funding levels for education programs, each program will be considered separately. Temporary shelter programs, which would not otherwise meet the eligibility criteria provided in OAR 581-015-2571(1)(b), are eligible for funding only when attached to an eligible treatment program and the children served are primarily awaiting placement in such programs;

(b) To be eligible for an education program, a treatment program must submit an application to the Department's Long-Term Care and Treatment Program demonstrating that the program meets all of the following criteria:

(A) Either:

(i) A letter of approval from the Addictions and Mental Health Division certifying that the psychiatric day treatment program or psychi-

atric residential treatment facility meets standards applicable for intensive children's mental health services under OAR 309-022-0100 through 309-022-0230; or

(ii) Documentation that the program provides long-term residential treatment of children placed by a state agency or designee of the state agency;

(B) Meet state licensing requirements for a private child-caring agency;

(C) Be operated by a nonprofit corporation or a political subdivision of the state;

(D) Demonstrate through client admissions, staff hiring practices, and client access to services that it meets requirements for ORS 659.850 relating to the prevention of discrimination; and

(E) Demonstrate through curriculum content, teaching practices, and facilities management that the constitutional requirements regarding no religious entanglement are met.

(2) The Department of Education (ODE) is responsible for approving the educational program under this rule and shall base approval on the following:

(a) The contracting school district must ensure that the education program is operated in compliance with a written agreement with the Department that specifies, at a minimum, the following services to be provided:

(A) Each child who is not a child with a disability under OAR 581-015-2130 through 581-015-2180 has a personalized educational plan that includes assessment, goals, services, and timelines;

(B) Information pertaining to students and educational programs is provided to the Department in an accurate and timely manner;

(C) Children have opportunities to be educated in the least restrictive environment;

(D) The education program is developed and implemented in conjunction with the treatment program; and

(E) Other requirements as identified by the Department.

(b) The Department must ensure that the education program is operated in compliance with a written agreement with the contracting school district.

(c) Final determinations concerning the eligibility of treatment programs for education funding are at the discretion of the State Superintendent of Public Instruction.

(3) Funding Procedures: Upon receipt of an application for funding for a program under this rule, the Department of Education will:

(a) Determine if the treatment program meets the eligibility criteria in this rule within 45 business days;

(b) If necessary, request additional funding or a limitation for funding from the State Legislature; and

(c) Fund the program according to the formula in OAR 581-015-2572 only when sufficient funds are available for the program under ORS 343.243 and an appropriation from the General Fund as determined by the Department.

Stat. Auth. ORS 326.051 & 343.961

Stats. Implemented: ORS 343.243 & 343.961

Hist.: ODE 14-2009, f. & cert. ef. 12-10-09; ODE 15-2011, f. & cert. ef. 12-15-11; ODE 36-2014, f. & cert. ef. 6-27-14

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**Rule Caption:** Class Size Collection

**Adm. Order No.:** ODE 37-2014

**Filed with Sec. of State:** 6-27-2014

**Certified to be Effective:** 6-27-14

**Notice Publication Date:** 4-1-2014

**Rules Adopted:** 581-002-0200

**Subject:** Implements HB 2644 (2013). Defines class and regular assignment of teacher for purposes of data collection relating to K-12 class. Specifies types of classes.

**Rules Coordinator:** Cindy Hunt—(503) 947-5651

**581-002-0200**

**Class Size Collection**

(1) As used in this rule:

(a) "Class" means a setting in which organized instruction of academic course content is provided to one or more students (including cross-age groupings) for a given period of time. A course may be offered to more than one class. Class instruction, provided by one or more teachers or other staff members, may be delivered in person or via a different medium.

(b) "Regular assignment of a teacher" means a teacher who consistently teaches a group of students in elementary self-contained classroom

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or group(s) of students in secondary classroom in academic subject area(s) over a given period of time.

(2) Beginning with the 2014–2015 school year, the Department of Education shall require public education programs to submit information as required by ORS 329.901 and this rule for the following categories of classes as identified based on the grade levels of the school:

(a) Elementary schools (any combination of grades Kindergarten through 8): Homeroom (Self-Contained)

(b) Secondary schools (any combination of grades 6 through 12) by academic subject area:

(A) English Language Arts (Reading or Language Arts);

(B) Mathematics;

(C) Science;

(D) Social Studies (Civics, History, Government, Economics, Geography);

(E) World Language and Literature; and

(F) Fine and Performing Arts.

(3) The Department shall utilize existing institution, staff and student data collections to collect the information required by ORS 329.901 and this rule.

(4) The Department shall provide a technical manual to public education programs that will be used to determine class size.

Stat. Auth.: ORS 329.901

Stat. Implemented: ORS 329.901

Hist.: ODE 37-2014, f. & cert. ef. 6-27-14

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## Oregon Department of Education, Early Learning Division Chapter 414

**Rule Caption:** Early Literacy Grant Program

**Adm. Order No.:** ELD 5-2014

**Filed with Sec. of State:** 7-7-2014

**Certified to be Effective:** 7-7-14

**Notice Publication Date:** 4-1-2014

**Rules Adopted:** 414-800-0005, 414-800-0010, 414-800-0015, 414-800-0020, 414-800-0025, 414-800-0030

**Subject:** Improve the readiness of children preparing to enter kindergarten; improve the reading proficiency of students by the time students complete the third grade; encourage early reading by involving parents, child care providers, and the community; expand the amount of time spent reading, adult support of reading, the availability of reading materials, cultural relevance and promote the level of enjoyment that literacy brings; and create materials and curriculum that promote early literacy.

**Rules Coordinator:** Cindy Hunt—(503) 947-5651

### 414-800-0005

#### Definitions

(1) “Achievement gap” means the research-based gap in achievement that often exists among students who are economically disadvantaged, students learning English as a second language and students who are African American, Hispanic or Native American and their peers.

(2) “At Risk” means a child who is at risk of not entering school ready to learn due to factors including but not limited to:

(a) Living in a household that is at or near poverty, as determined under federal poverty guidelines;

(b) Living in inadequate or unsafe housing; having inadequate nutrition;

(c) Living in a household where there is significant or documented domestic conflict, disruption or violence;

(d) Having a parent who suffers from mental illness, who engages in substance abuse or who experiences a developmental disability or an intellectual disability;

(e) Living in circumstances under which there is neglectful or abusive care-giving; or

(f) Having unmet health care and medical treatment needs and having a racial or ethnic minority status that is historically consistent with disproportionate overrepresentation in academic achievement gaps or in the systems of child welfare, foster care or juvenile or adult corrections.

(3) “Early childhood services” means programs and services for children ages birth through six years of age that address language and literacy development, cognition and general knowledge and learning approaches, physical health and well-being, motor development and social and emotional development. Providers of early childhood services include Early

Learning Hubs, relief nurseries, home visiting programs, child care providers, preschools, Head Start, Oregon Pre-K, and others who provide programs and services for children ages birth through six.

(4) “Early Learning Hub” means an existing or newly created entity designated by regional partners to coordinate early learning services designed to produce better outcomes for children: increase kindergarten readiness for at-risk children, to increase the stable and attached families and to ensure system coordination and efficiency in order to attain Oregon’s 40-40-20 Educational Goal. Regional partners may include counties, cities, school districts, education service districts, community colleges, public universities, private educational institutions, faith based organizations, non-profit service providers, and tribes.

(5) “English Language Learners” means children whose native language is other than English or who speak a language other than English in their home.

(6) “Non-profit organization” means:

(a) An organization established as a nonprofit organization under the laws of Oregon; and

(b) Qualifies as an exempt organization under section 501 (c)(3) of the Internal Revenue Code as defined in ORS 314.011.

Stat. Auth. 2013 OL Ch. 660, Sec. 2 (Enrolled HB 3232)

Stat. Implemented: 2013 OL Ch. 660, Sec. 2 (Enrolled HB 3232)

Hist.: ELD 3-2014(Temp), f. & cert. ef. 1-15-14 thru 7-13-14; ELD 5-2014, f. & cert. ef. 7-7-14

### 414-800-0010

#### Establishment and Purpose

(1) The early literacy grant is established as part of the Oregon Early Reading Program Strategic Investment.

(2) The purpose of the early literacy grant is to:

(a) Improve the readiness of children preparing to enter kindergarten;

(b) Improve the reading proficiency of students by the time students complete the third grade;

(c) Encourage early reading by involving parents, child care providers, and the community to ensure that children have an early start in reading;

(d) Expand the amount of time spent reading, adult support of reading, the availability of reading materials, cultural relevance and promote the level of enjoyment that literacy brings; and

(e) Create materials and curriculum that promote early literacy.

Stat. Auth. 2013 OL Ch. 660, Sec. 2 (Enrolled HB 3232)

Stat. Implemented: 2013 OL Ch. 660, Sec. 2 (Enrolled HB 3232)

Hist.: ELD 3-2014(Temp), f. & cert. ef. 1-15-14 thru 7-13-14; ELD 5-2014, f. & cert. ef. 7-7-14

### 414-800-0015

#### Eligibility

(1) The following types of organizations may apply for funding:

(a) Non-profit organizations;

(b) Public libraries;

(c) Public schools or school districts;

(d) Providers of early childhood services.

(2) The Early Learning Division shall give preference to receive funding to providers of early childhood services that are Early Learning Hubs.

(3) A single grant proposal may include more than one eligible provider but the fiscal agent must be one of the eligible applicants identified in subsections (1) or (2) of this rule.

Stat. Auth. 2013 OL Ch. 660, Sec. 2 (Enrolled HB 3232)

Stat. Implemented: 2013 OL Ch. 660, Sec. 2 (Enrolled HB 3232)

Hist.: ELD 3-2014(Temp), f. & cert. ef. 1-15-14 thru 7-13-14; ELD 5-2014, f. & cert. ef. 7-7-14

### 414-800-0020

#### Criteria

(1) The Early Learning Division shall establish a request for application with a solicitation and approval process to be conducted each biennium for which early literacy grant funds under the Oregon Early Reading Program are available. The Division shall notify eligible applicants of the proposal process and due dates, and make available necessary guidelines and application forms.

(2) Grants shall be awarded based on the following generally applicable criteria:

(a) The extent to which the applicant demonstrates its ability to lead the implementation of the early literacy program, foster collaboration with other community partners, and leverage the early literacy program as a key strategy for promoting alignment between early learning and K–3.

(b) The extent to which the grant application addresses equity and strategies for targeting specific sub-populations of children, including those

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who are economically disadvantaged, students learning English as a second language, and students who are African American, Hispanic or Native American; those who are not currently enrolled in formal Pre-K or child care programs, including those participating in license exempt and relative care; and/or those who meet criteria for being at risk of entering kindergarten with limited literacy skills.

(c) The extent to which the application identifies clear strategies for building the capacity of adults to engage in high quality reading experiences with children, expanding reading opportunities for children, increasing the frequency with which children are read to in the home, and expanding access to books, libraries, and/or materials and curriculum that promote early literacy.

(d) The extent to which the project budget is appropriate for the number of children and adults that are proposed to be reached through the proposed early literacy program.

(e) The extent to which the application demonstrates how outcomes will be measured and sustainability will be achieved.

(3) The Early Learning Division shall allocate funds for the grant program based on the evaluation of the grant application and the following considerations:

(a) Geographic location of applicants to insure geographic diversity within the recipients of grant program funds throughout the state;

(b) Preference to entities that have demonstrated success in improving outcomes for children and families.

Stat. Auth. 2013 OL Ch. 660, Sec. 2 (Enrolled HB 3232)

Stat. Implemented: 2013 OL Ch. 660, Sec. 2 (Enrolled HB 3232)

Hist.: ELD 3-2014(Temp), f. & cert. ef. 1-15-14 thru 7-13-14; ELD 5-2014, f. & cert. ef. 7-7-14

## 414-800-0025

### Funding

(1) The Early Learning Division shall determine for each fiscal year the portion of the funds available for the early literacy grant.

(2) Funds received under this section 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. 660, Sec. 2 (Enrolled HB 3232)

Stat. Implemented: 2013 OL Ch. 660, Sec. 2 (Enrolled HB 3232)

Hist.: ELD 3-2014(Temp), f. & cert. ef. 1-15-14 thru 7-13-14; ELD 5-2014, f. & cert. ef. 7-7-14

## 414-800-0030

### Reporting

Recipients of early literacy grant funds must report on their grant funded program outcomes and expenditures to the Early Learning Council on an annual basis through a written report to the Early Learning Division. The report must include:

(1) Description of outputs and activities resulting from the early literacy partnership strategy, including, but not limited to trainings delivered to parents and/or providers or early learning services, books or other materials provided to families and/or providers of early learning services, and number of adults and children reached.

(2) Impact on changes in adult behavior related to reading to children, including but not limited to frequency and quality of reading.

(3) Impact on changes in child behavior related to reading with adults, including but not limited to frequency and quality of reading.

(4) Impact on adult and child attitudes toward reading, including, but not limited to, self-reports related to increased enjoyment of reading.

(5) Impact on closing early literacy opportunity gaps for children who are economically disadvantaged, English language learners, African American, Hispanic, or Native American.

Stat. Auth. 2013 OL Ch. 660, Sec. 2 (Enrolled HB 3232)

Stat. Implemented: 2013 OL Ch. 660, Sec. 2 (Enrolled HB 3232)

Hist.: ELD 3-2014(Temp), f. & cert. ef. 1-15-14 thru 7-13-14; ELD 5-2014, f. & cert. ef. 7-7-14

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**Rule Caption:** Kindergarten Readiness Partnership and Innovation Program

**Adm. Order No.:** ELD 6-2014

**Filed with Sec. of State:** 7-7-2014

**Certified to be Effective:** 7-7-14

**Notice Publication Date:** 4-1-2014

**Rules Adopted:** 414-800-0105, 414-800-0110, 414-800-0115, 414-800-0120, 414-800-0125, 414-800-0130

**Subject:** The program creates the opportunity to increase the connection between early learning and K–12 by investing in innovative and promising models for early learning/K–12 integration across the

state and to build a body of evidence that Oregon can use to create stronger alignment between its early learning and K–12 education systems. The goal of this program is to promote community and school partnerships and innovations that result in measurable increase in children’s readiness for kindergarten.

**Rules Coordinator:** Cindy Hunt—(503) 947-5651

## 414-800-0105

### Definitions

The following definitions apply to OAR 414-800-0105 to 414-800-0130:

(1) “Achievement gap” means the research-based gap in achievement that often exists among students who are economically disadvantaged, students learning English as a second language and students who are African American, Hispanic or Native American and their peers.

(2) “At Risk” means a child who is at risk of not entering school ready to learn due to factors including but not limited to:

(a) Living in a household that is at or near poverty, as determined under federal poverty guidelines;

(b) Living in inadequate or unsafe housing; having inadequate nutrition;

(c) Living in a household where there is significant or documented domestic conflict, disruption or violence;

(d) Having a parent who suffers from mental illness, who engages in substance abuse or who experiences a developmental disability or an intellectual disability;

(e) Living in circumstances under which there is neglectful or abusive care-giving; or

(f) Having unmet health care and medical treatment needs and having a racial or ethnic minority status that is historically consistent with disproportionate overrepresentation in academic achievement gaps or in the systems of child welfare, foster care or juvenile or adult corrections.

(3) “Early childhood services” means programs and services for children ages 0 through 6 years of age that address language and literacy development, cognition and general knowledge and learning approaches, physical health and well-being, motor development and social and emotional development. Providers of early childhood services include Early Learning Hubs, relief nurseries, home visiting programs, child care providers, preschools, Head Start, Oregon Pre-K, and others who provide programs and services for children ages 0–6.

(4) “Early Learning Hub” means an existing or newly created entity designated by regional partners to coordinate early learning services designed to produce better outcomes for children: increase kindergarten readiness for at-risk children, to increase the stable and attached families and to ensure system coordination and efficiency in order to attain Oregon’s 40-40-20 Educational Goal. Regional partners may include counties, cities, school districts, education service districts, community colleges, public universities, private educational institutions, faith based organizations, non-profit service providers, and tribes.

(5) “Elementary school” means any public school that has at least kindergarten, first, second, and third grade classes.

(6) “English Language Learners” means children whose native language is other than English or who speak a language other than English in their home.

(7) “Non-profit organization” means:

(a) An organization established as a nonprofit organization under the laws of Oregon; and

(b) Qualifies as an exempt organization under section 501 (c)(3) of the Internal Revenue Code as defined in ORS 314.011.

(8) “Postsecondary Institution” means a:

(a) A community college operated under ORS chapter 341.

(b) The following public universities within the Oregon University System:

(A) University of Oregon.

(B) Oregon State University.

(C) Portland State University.

(D) Oregon Institute of Technology.

(E) Western Oregon University.

(F) Southern Oregon University.

(G) Eastern Oregon University.

(c) Oregon Health and Science University.

(d) An Oregon-based, generally accredited, not-for-profit institution of higher education.

Stat. Auth.: 2013 OL Ch. 728 Sec. 26 (Enrolled HB 2013)

Stat. Implemented: 2013 OL Ch. 728 Sec. 26 (Enrolled HB 2013)

# ADMINISTRATIVE RULES

Hist.: ELD 4-2014(Temp), f. & cert. ef. 1-15-14 thru 7-13-14; ELD 6-2014, f. & cert. ef. 7-7-14

## 414-800-0110

### Establishment and Purpose

(1) The Early Learning Kindergarten Readiness Partnership and Innovation Program is established by House Bill 2013, Section 26.

(2) This program creates the opportunity to increase the connection between early learning and K-12 by investing in innovative and promising models for early learning/K-12 integration across the state and to build a body of evidence that Oregon can use to create stronger alignment between its early learning and K-12 education systems. The goal of this program is to promote community and school partnerships and innovations that result in measurable increase in children's readiness for kindergarten.

Stat. Auth.: 2013 OL Ch. 728 Sec. 26 (Enrolled HB 2013)

Stat. Implemented: 2013 OL Ch. 728 Sec. 26 (Enrolled HB 2013)

Hist.: ELD 4-2014(Temp), f. & cert. ef. 1-15-14 thru 7-13-14; ELD 6-2014, f. & cert. ef. 7-7-14

## 414-800-0115

### Eligibility

The following types of organizations may apply for funding:

- (1) Early Learning Hubs
- (2) Education Service Districts;
- (3) K-12 school districts;
- (4) Non-profit organizations;
- (5) Post-Secondary institutions; or
- (6) A collaboration of any of the above.

Stat. Auth.: 2013 OL Ch. 728 Sec. 26 (Enrolled HB 2013)

Stat. Implemented: 2013 OL Ch. 728 Sec. 26 (Enrolled HB 2013)

Hist.: ELD 4-2014(Temp), f. & cert. ef. 1-15-14 thru 7-13-14; ELD 6-2014, f. & cert. ef. 7-7-14

## 414-800-0120

### Criteria

(1) Applicants for grant funds must meet one or more of the following criteria:

(a) Form a partnership with at least one provider of early learning services, licensed childcare provider or elementary school;

(b) Form partnerships with community-based providers of early childhood services to provide preschool and other early-learning strategies;

(c) Establish ambitious but meaningful targets for kindergarten readiness;

(d) Invest resources in serving a significant number of children in communities with high concentration of poverty, underserved racial groups, non-native English speakers, or rural and remote communities;

(e) Align with and supplement federal programs to provide moneys for educational purposes;

(f) Agree to report to, and partner with all Early Learning Hubs serving the region.

(2) Applicants must demonstrate:

(a) A proven track record of ability to achieve developmental outcomes for children.

(b) A clear commitment to equity.

(c) The proposed plan is likely to:

(A) Result in a demonstrable connection between early learning providers and schools; and

(B) Improve kindergarten readiness as measured by the Oregon Kindergarten Assessment.

(3) Priority for funding will be given to applicants that:

(a) Assist children in becoming ready for kindergarten or being successful in kindergarten;

(b) Share professional developments strategies and resources with providers of early learning services, child care providers and kindergarten teachers;

(c) Demonstrate a commitment to family engagement and three-way partnerships among early childhood programs, school, and parents and families; or

(d) Demonstrate the grant funds will serve a significant number of children in communities with high concentration of poverty, underserved racial or ethnic groups, non-native English speakers, or rural and remote communities.

Stat. Auth.: 2013 OL Ch. 728 Sec. 26 (Enrolled HB 2013)

Stat. Implemented: 2013 OL Ch. 728 Sec. 26 (Enrolled HB 2013)

Hist.: ELD 4-2014(Temp), f. & cert. ef. 1-15-14 thru 7-13-14; ELD 6-2014, f. & cert. ef. 7-7-14

## 414-800-0125

### Funding

(1) The Early Learning Council shall determine for each fiscal year the portion of the funds available for the early learning kindergarten readiness partnership and innovation fund.

(2) Funds received under this section must be separately accounted for and may be used only to provide funding for the purposes described in the application of the grant recipient.

(3) Funds may not be used for capital expenses or to supplant existing federal or state funds.

Stat. Auth.: 2013 OL Ch. 728 Sec. 26 (Enrolled HB 2013)

Stat. Implemented: 2013 OL Ch. 728 Sec. 26 (Enrolled HB 2013)

Hist.: ELD 4-2014(Temp), f. & cert. ef. 1-15-14 thru 7-13-14; ELD 6-2014, f. & cert. ef. 7-7-14

## 414-800-0130

### Reporting

Recipients of these funds must report on the grant to the Early Learning Council via the Early Learning Division at the end of the grant period. The report must include at least:

(1) Description of outputs and activities related to implementation of the early learning/K-12 partnership strategy.

(2) Impact on kindergarten readiness, as measured by the Oregon Kindergarten Assessment.

(3) Impact on the attitudes, behaviors, and instructional practices of early childhood educators and kindergarten teachers.

(4) Impact on the attitudes, behaviors, and practices of children's families.

Stat. Auth.: 2013 OL Ch. 728 Sec. 26 (Enrolled HB 2013)

Stat. Implemented: 2013 OL Ch. 728 Sec. 26 (Enrolled HB 2013)

Hist.: ELD 4-2014(Temp), f. & cert. ef. 1-15-14 thru 7-13-14; ELD 6-2014, f. & cert. ef. 7-7-14

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**Oregon Health Authority,  
Addictions and Mental Health Division:  
Mental Health Services  
Chapter 309**

**Rule Caption:** Permanent amendments to OAR 309-039 regarding approval of non-inpatient mental health providers.

**Adm. Order No.:** MHS 11-2014

**Filed with Sec. of State:** 6-17-2014

**Certified to be Effective:** 6-19-14

**Notice Publication Date:** 6-1-2014

**Rules Amended:** 309-039-0500, 309-039-0510, 309-039-0520, 309-039-0530, 309-039-0540, 309-039-0560, 309-039-0570

**Rules Repealed:** 309-039-0550

**Subject:** These rules apply to the non-inpatient certifications to provider organizations rendering mental health treatment services. The certifications exist solely for the purpose of qualifying for insurance reimbursement.

Agencies that contract with OHA, subcontract with OHA, or contract with a Community Mental Health Program are not eligible for the "non-inpatient" certification.

**Rules Coordinator:** Nola Russell—(503) 945-7652

## 309-039-0500

### Purpose and Scope

These rules apply to certifications of provider organizations that render non-inpatient mental health treatment services. The certifications exist solely for the purpose of qualifying for insurance reimbursement. Agencies that contract with OHA, subcontract with OHA, or contract with a Community Mental Health Program are not eligible for the "non-inpatient" certification.

Stat. Auth.: ORS 413.042 & 743A.168

Stats. Implemented: ORS 743A.160 & 743.168

Hist.: MHD 2-1989(Temp), f. 3-13-89, cert. ef. 3-14-89; MHD 4-1989, f. & cert. ef. 8-25-89; MHD 1-1993, f. 2-24-93, cert. ef. 2-26-93; MHS 13-2013(Temp), f. & cert. ef. 12-20-13 thru 6-18-14; MHS 11-2014, f. 6-17-14, cert. ef. 6-19-14

## 309-039-0510

### Definitions

As used in these rules:

(1) "Community Mental Health Program" means the organization of all services for persons with mental or emotional disturbances, drug abuse problems, mental retardation or other developmental disabilities, and alcoholism and alcohol abuse problems, operated by, or contractually affiliated

# ADMINISTRATIVE RULES

with, a local mental health authority, operated in a specific geographic area of the state under an intergovernmental agreement or direct contract with the Division.

(2) "Certificate of Approval" means a Certificate of Approval as defined in OAR 309-012-0130 through 309-012-0220.

(3) "Division" means the Addictions and Mental Health Division of the Oregon Health Authority.

(4) "Facility" means a corporate or other entity which provides services for the treatment of mental health conditions.

(5) "Non-Related Adult" means any person over 18 years of age who is not related by blood, marriage or living situation. Foster parents and adults co-habiting with a child may be considered to be related adults.

(6) "Outpatient Program" means a program that provides evaluation, treatment and rehabilitation on a regularly scheduled basis or in response to crisis in a setting outside an inpatient program, residential program, day treatment or partial hospitalization program.

(7) "Program" means a particular type or level of service that is organizationally distinct within a facility.

(8) "Provider" means a program operated by either a licensed business or a corporation that provides mental health services.

(9) "Qualified Mental Health Associate (QMHA)" means a person delivering services under the direct supervision of a QMHP who meets the minimum qualifications as authorized by the LMHA, or designee, and specified in 309-019-0125(7).

(10) "Qualified Mental Health Professional (QMHP)" means a LMP or any other person meeting the minimum qualifications as authorized by the LMHA, or designee, and specified in 309-019-0125(8).

(11) "Qualified Supervisor" means any person meeting the following qualifications:

(a) A medical or osteopathic physician licensed by the Board of Medical Examiners for the State of Oregon and who is board eligible for the practice of psychiatry;

(b) A psychologist licensed by the State Board of Psychologist Examiners;

(c) A registered nurse certified as a psychiatric nurse practitioner by the Oregon State Board of Nursing;

(d) A clinical social worker licensed by the State Board of Clinical Social Workers;

(e) A Licensed Professional Counselor (LPC) licensed by the State of Oregon; or

(f) A Licensed Marriage and Family Therapist (LMFT), licensed by the State of Oregon.

(12) "Residential Program" means a program that provides room, board, and an organized full-day program of mental health services in a facility for six or more persons who do not require 24-hour nursing care.

Stat. Auth.: ORS 413.042 & 743A.168

Stats. Implemented: ORS 743A.160 & 743.168

Hist.: MHD 2-1989(Temp), f. 3-13-89, cert. ef. 3-14-89; MHD 4-1989, f. & cert. ef. 8-25-89; MHD 1-1993, f. 2-24-93, cert. ef. 2-26-93; MHS 13-2013(Temp), f. & cert. ef. 12-20-13 thru 6-18-14; MHS 11-2014, f. 6-17-14, cert. ef. 6-19-14

## 309-039-0520

### Eligible Providers

(1) Agencies that currently hold a Certificate of Approval for the provision of mental health services as a contractor of OHA, a subcontractor of OHA, or a contractor of a Community Mental Health Program, or a license to provide residential or adult foster care services, are not eligible for the "non-inpatient" certification.

(2) Certification as a non-inpatient mental health provider is not a substitute for the certification and Medicaid provider enrollment processes that are required to render services to individuals enrolled in the Oregon Health Plan, or to individuals whose services are otherwise funded by the State.

(3) Only providers as defined in OAR 309-039-0510(10) are eligible for approval under 309-039-0500 through 309-039-0580. An eligible provider must:

(a) Control the office space, such as by owning, renting or leasing it;

(b) Control the intake to the program and determine which therapist provides assessment and treatment;

(c) Control all clinical records, including storage;

(d) Do all the billing and collect all fees, including deductibles and co-payments;

(e) Pay staff for clinical services provided; and

(f) Display the provider name on the premises so as to be clearly visible to clients.

(4) An individual operating as a private practitioner, whether or not a licensed business or corporation, is not eligible for approval under these rules.

Stat. Auth.: ORS 413.042 & 743A.168

Stats. Implemented: ORS 743A.160 & 743.168

Hist.: MHD 2-1989(Temp), f. 3-13-89, cert. ef. 3-14-89; MHD 4-1989, f. & cert. ef. 8-25-89; MHD 1-1993, f. 2-24-93, cert. ef. 2-26-93; MHS 13-2013(Temp), f. & cert. ef. 12-20-13 thru 6-18-14; MHS 11-2014, f. 6-17-14, cert. ef. 6-19-14

## 309-039-0530

### Approval Process

(1) Request for approval or renewal shall be submitted to the Division with an application form, materials specified in the application instructions and a check or money order in the amount of \$600.00 payable to the Division. This application fee shall be non-refundable irrespective of whether the provider is issued a Certificate of Approval.

(a) Any provider submitting an application for approval or renewal after the effective date of this rule shall pay the application and certification fees;

(b) The fees shall be increased biennially at the same rate as approved by the Legislative Assembly or the Emergency Board for other services and programs of the Division.

(2) A Certificate of Approval, valid for up to three years, shall be issued to the provider when the administrative and certification reviews of the program by the Division indicate the provider is in compliance with the applicable parts of OAR 309-039-0500 through 309-039-0580. The Certificate may be for a period of time shorter than three years if the provider is not in full compliance with these rules.

(3) A Certificate of Approval is not transferable or applicable to any location, facility, or management other than that indicated on the Certificate of Approval.

(4) The award, renewal, and duration of Certificates of Approval as well as periodic and interim reviews, establishment of conditions, denial, revocation and hearings shall comply with OAR 309-012-0130 through 309-012-0220.

Stat. Auth.: ORS 413.042 & 743A.168

Stats. Implemented: ORS 743A.160 & 743.168

Hist.: MHD 2-1989(Temp), f. 3-13-89, cert. ef. 3-14-89; MHD 4-1989, f. & cert. ef. 8-25-89; MHD 1-1993, f. 2-24-93, cert. ef. 2-26-93; MHS 13-2013(Temp), f. & cert. ef. 12-20-13 thru 6-18-14; MHS 11-2014, f. 6-17-14, cert. ef. 6-19-14

## 309-039-0540

### General Standards

Each provider is required to meet all applicable standards from the following standards:

(1) Specific Staff Qualifications and Competencies, detailed in OAR 309-019-0125; and

(2) Personnel Documentation, Training and Supervision, detailed in OAR 309-019-0130.

Stat. Auth.: ORS 413.042 & 743A.168

Stats. Implemented: ORS 743A.160 & 743.168

Hist.: MHD 2-1989(Temp), f. 3-13-89, cert. ef. 3-14-89; MHD 4-1989, f. & cert. ef. 8-25-89; MHD 1-1993, f. 2-24-93, cert. ef. 2-26-93; MHS 13-2013(Temp), f. & cert. ef. 12-20-13 thru 6-18-14; MHS 11-2014, f. 6-17-14, cert. ef. 6-19-14

## 309-039-0560

### Standards for Mental Health Partial Hospitalization and Day Treatment Programs

In addition to OAR 309-039-0500 through 309-039-0540, each provider operating a mental health partial hospitalization or day treatment program shall comply with the following standards:

(1) Facility standards. The facility shall meet all applicable state and local fire, safety, and health standards.

(2) Treatment standards. Each provider shall provide four hours a day, five days a week, structured treatment activities which address mental health conditions and which includes the following services each week:

(a) Daily group therapy for mental health conditions;

(b) Individual counseling with a primary therapist;

(c) Family therapy, as appropriate to the individual needs of the client;

(d) Psychotropic medication management or monitoring; and

(e) Skills training, vocational training, socialization or structured recreational/physical fitness activities.

Stat. Auth.: ORS 413.042 & 743A.168

Stats. Implemented: ORS 743A.160 & 743.168

Hist.: MHD 2-1989(Temp), f. 3-13-89, cert. ef. 3-14-89; MHD 4-1989, f. & cert. ef. 8-25-89; MHD 1-1993, f. 2-24-93, cert. ef. 2-26-93; MHS 11-2014, f. 6-17-14, cert. ef. 6-19-14

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## 309-039-0570

### Standards for Mental Health Residential Programs

In addition to meeting OAR 309-039-0500 through 309-039-0540 each provider operating a mental health residential program shall meet the following standards:

(1) Facility standards. Each provider shall meet OAR 309-035-0100 through 309-035-0190.

(2) Treatment standards. Each provider shall provide eight hours of structured services out of every 12 hours from 8 a.m. to 8 p.m. which, each week, includes:

(a) Daily group therapy which addresses the mental health or nervous condition;

(b) Individual counseling which addresses the mental health or nervous condition with a primary therapist two times per week;

(c) Family therapy, as appropriate to the individual needs of the client;

(d) Psychotropic medication management or monitoring, as appropriate to the individual needs of the client;

(e) One hour per day of structured recreational/physical fitness activities; and

(f) Structured skills training, vocational training, or socialization activities.

(3) Treatment standards for children and adolescents:

(a) Each provider shall comply with OAR 309-035-0100 through 309-035-0190;

(b) Each residential facility serving children or adolescents shall meet the standards described by OAR 413-210-0100 through 413-210-0250, Standards for reviewing, inspecting and licensing those private child caring agencies which are for residential care and treatment services for children and which are subject to the provisions of ORS Chapter 418, for licensure by the Children's Services Division.

(4) Staffing standards. Each provider shall:

(a) Provide staff coverage 24 hours-a-day, seven days-a-week;

(b) Employ sufficient qualified mental health professionals to maintain a maximum caseload of no more than eight clients;

(c) Have a mental health associate on site, and awake, from 8 p.m. to 8 a.m.; and

(d) Have available a mental health professional on-call from 8 p.m. to 8 a.m.

Stat. Auth.: ORS 413.042 & 743A.168

Stats. Implemented: ORS 743A.160 & 743.168

Hist.: MHD 2-1989(Temp), f. 3-13-89, cert. ef. 3-14-89; MHD 4-1989, f. & cert. ef. 8-25-89; MHS 13-2013(Temp), f. & cert. ef. 12-20-13 thru 6-18-14; MHS 11-2014, f. 6-17-14, cert. ef. 6-19-14

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**Rule Caption:** Repeal inapplicable rules for developmental disabilities in OAR chapter 309 related to training centers

**Adm. Order No.:** MHS 12-2014

**Filed with Sec. of State:** 7-1-2014

**Certified to be Effective:** 7-1-14

**Notice Publication Date:** 6-1-2014

**Rules Repealed:** 309-042-0000, 309-042-0001, 309-042-0002, 309-042-0003, 309-042-0004, 309-042-0005, 309-042-0006, 309-042-0007, 309-042-0008, 309-042-0009, 309-042-0015, 309-042-0030, 309-042-0035, 309-042-0050, 309-042-0060, 309-042-0065, 309-042-0070, 309-042-0075, 309-042-0080, 309-042-0100, 309-042-0110, 309-042-0120, 309-042-0130, 309-042-0140, 309-042-0150, 309-042-0160, 309-042-0170, 309-042-0180, 309-042-0190, 309-042-0200, 309-042-0210, 309-042-0220, 309-043-0230, 309-043-0240, 309-043-0250, 309-043-0260, 309-043-0270, 309-043-0280, 309-043-0290, 309-043-0300, 309-043-0310, 309-043-0320, 309-043-0330, 309-043-0340, 309-043-0350, 309-043-0360, 309-043-0370, 309-043-0380, 309-043-0390, 309-043-0400, 309-043-0410, 309-043-0420, 309-043-0430, 309-043-0440, 309-043-0450, 309-043-0460, 309-043-0470, 309-043-0480, 309-043-0490, 309-043-0500, 309-043-0510, 309-043-0520, 309-043-0530, 309-043-0540, 309-043-0550, 309-043-0560, 309-043-0570, 309-043-0580

**Subject:** The Department of Human Services (Department) is permanently repealing the rules for developmental disabilities in OAR chapter 309, divisions 42 and 43 relating to state and residential training centers because the rules are no longer applicable. In addition, rules for developmental disabilities do not belong in OAR chapter

309 because OAR chapter 309 belongs to the Oregon Health Authority (Authority), Addictions and Mental Health Division.

**Rules Coordinator:** Nola Russell—(503) 945-7652

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## Oregon Health Authority, Division of Medical Assistance Programs Chapter 410

**Rule Caption:** PHP and CCO Payment Methodologies for A and B Hospitals

**Adm. Order No.:** DMAP 34-2014(Temp)

**Filed with Sec. of State:** 6-25-2014

**Certified to be Effective:** 7-1-14 thru 12-27-14

**Notice Publication Date:**

**Rules Amended:** 410-141-0420, 410-141-3420

**Subject:** The Division needs to amend these rules to comply with ORS 414.653. The statute requires Type A and B Hospitals to move to a new payment methodology. Type A and B hospitals that are found at financial risk will remain on the current methodology and will not have to change.

**Rules Coordinator:** Sandy Cafourek—(503) 945-6430

## 410-141-0420

### Managed Care Prepaid Health Plan Billing and Payment under the Oregon Health Plan

The Division of Medical Assistance Programs (Division) may have specific definitions for common terms. Please use OAR 410-141-0000, Definitions, in conjunction with this rule.

(1) Providers must submit all billings for Oregon Health Plan (OHP) clients to Prepaid Health Plans (PHPs) and to the Division within four months and twelve months, respectively, of the date of service, subject to other applicable Division billing rules. Providers must submit billings to PHPs within the four-month time frame except in the following cases:

(a) Pregnancy;

(b) Eligibility issues such as retroactive deletions or retroactive enrollments;

(c) Medicare is the primary payer;

(d) Other cases that could have delayed the initial billing to the PHP (which does not include failure of provider to certify the member's (see definition) eligibility); or

(e) Third Party Liability (TPL). Pursuant to 42 CFR 36.61, subpart G: Indian Health Services and the amended Public Law 93-638 under the Memorandum of Agreement that Indian Health Service and 638 Tribal Facilities are the payers of last resort and are not considered an alternative liability or TPL.

(2) Providers must be enrolled with the Division to be eligible for Division fee-for-service (FFS) payments. Mental health providers, except Federally Qualified Health Centers (FQHC), must be approved by the Local Mental Health Authority (LMHA) and the Addictions and Mental Health (AMH) division before enrollment with the Division or to be eligible for PHP payment for services. Providers may be retroactively enrolled in accordance with OAR 410-120-1260, Provider Enrollment.

(3) Providers, including mental health providers (see definition), must be enrolled with the Division either as a Medicaid provider or an encounter-only provider prior to submission of encounter data to ensure the servicing provider is not excluded per federal and state standard as defined in OAR 407-120-0300.

(4) Providers shall verify before rendering services which member is eligible for the Division of Medical Assistance Programs on the date of service using the Division tools and optionally the PHP's tools, as applicable, and that the service to be rendered is covered under the Oregon Health Plan benefit package of covered services. Providers shall also identify the party responsible for covering the intended service and seek preauthorizations from the appropriate payer before rendering services. Providers shall inform members of any charges for non-covered services (see definition) prior to the services being delivered.

(5) Capitated services:

(a) PHPs receive a capitation payment to provide services to members. These services are referred to as capitated services;

(b) PHPs are responsible for payment of all capitated services. Such services should be billed directly to the PHP, unless the PHP or the Division specifies otherwise. PHPs may require providers to obtain preauthorization to deliver certain capitated services.

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(6) Payment by the PHP to participating providers for capitated services is a matter between the PHP and the participating provider except as follows:

(a) Preauthorizations:

(A) PHPs shall have written procedures for processing preauthorization requests received from any provider. The procedures shall specify time frames for:

(i) Date stamping preauthorization requests when received;

(ii) Determining within a specific number of days from receipt whether a preauthorization request is valid or non-valid;

(iii) The specific number of days allowed for follow up on pended preauthorization requests to obtain additional information;

(iv) The specific number of days following receipt of the additional information that a redetermination must be made;

(v) Providing services after office hours and on weekends that require preauthorization;

(vi) Sending notice of the decision with appeal rights to the member when the determination is made to deny the requested service as specified in 410-141-0263.

(B) PHPs shall make a determination on at least 95 percent of valid preauthorization requests within two working days of receipt of a preauthorization or reauthorization request related to urgent services, alcohol and drug services, or care required while in a skilled nursing facility. Preauthorization for prescription drugs must be completed and the pharmacy notified within 24 hours. If a preauthorization for a prescription cannot be completed within the 24 hours, the PHP must provide for the dispensing of at least a 72-hour supply if the medical need for the drug is immediate. PHP shall notify providers of such determination within two working days of receipt of the request;

(C) For expedited prior authorization requests in which the provider indicates or the PHP determines that following the standard timeframe could seriously jeopardize the member's life or health or ability to attain, maintain, or regain maximum function:

(i) The PHP must make an expedited authorization decision and provide notice as expeditiously as the member's health condition requires and no later than three working days after receipt of the request for service;

(ii) The PHP may extend the three working days' time period by up to 14 calendar days if the member requests an extension or if the PHP justifies to the Division a need for additional information and how the extension is in the member's interest.

(D) For all other preauthorization requests, PHPs shall notify providers of an approval, a denial, or a need for further information within 14 calendar days of receipt of the request. PHPs must make reasonable efforts to obtain the necessary information during that 14-day period. However, the PHP may use an additional 14 days to obtain follow-up information if the PHP justifies (to the Division upon request) the need for additional information and how the delay is in the interest of the member. The PHP shall make a determination as the member's health condition requires but no later than the expiration of the extension.

(b) Claims payment:

(A) PHPs shall have written procedures for processing claims submitted for payment from any source. The procedures shall specify time frames for:

(i) Date stamping claims when received;

(ii) Determining within a specific number of days from receipt whether a claim is valid or non-valid;

(iii) The specific number of days allowed for follow up of pended claims to obtain additional information;

(iv) The specific number of days following receipt of additional information that a determination must be made; and

(v) Sending notice of the decision with appeal rights to the member when the determination is made to deny the claim.

(B) PHPs shall pay or deny at least 90 percent of valid claims within 45 calendar days of receipt and at least 99 percent of valid claims within 60 calendar days of receipt. PHPs shall make an initial determination on 99 percent of all claims submitted within 60 calendar days of receipt;

(C) PHPs shall provide written notification of PHP determinations when such determinations result in a denial of payment for services for which the member may be financially responsible. Such notice shall be provided to the member and the treating provider within 14 calendar days of the final determination. The notice to the member shall be a Division or AMH approved notice format and shall include information on the PHP's internal appeals process, and the Notice of Hearing Rights (DMAP 3030) shall be attached. The notice to the provider shall include the reason for the denial;

(D) PHPs shall not require providers to delay billing to the PHP;

(E) PHPs shall not require Medicare be billed as the primary insurer for services or items not covered by Medicare, nor require non-Medicare approved providers to bill Medicare;

(F) PHPs shall not deny payment of valid claims when the potential TPR is based only on a diagnosis, and no potential TPR has been documented in the member's clinical record;

(G) PHPs shall not delay nor deny payments because a co-payment was not collected at the time of service.

(c) FCHPs, PCOs, and MHOs are responsible for payment of Medicare coinsurances and deductibles up to the Medicare or PHP's allowable for covered services the member receives within the PHP, for authorized referral care, and for urgent care services or emergency services the member receives from nonparticipating providers (see definition). FCHPs, PCOs, and MHOs are not responsible for Medicare coinsurances and deductibles for non-urgent or non-emergent care members receive from nonparticipating providers;

(d) FCHPs and PCOs shall pay transportation, meals, and lodging costs for the member and any required attendant for out-of-state services (as defined in General Rules, chapter 410, division 120) that the FCHP and PCO has arranged and authorized when those services are available within the state, unless otherwise approved by the Division;

(e) PHPs shall be responsible for payment of covered services (see definition) provided by a non-participating provider that was not preauthorized if the following conditions exist:

(A) It can be verified that the participating provider (see definition) ordered or directed the covered services to be delivered by a nonparticipating provider; and

(B) The covered service was delivered in good faith without the preauthorization; and

(C) It was a covered service that would have been preauthorized with a participating provider if the PHP's referral protocols had been followed;

(D) The PHP shall be responsible for payment to non-participating providers (providers enrolled with the Division that do not have a contract with the PHP) for covered services that are subject to reimbursement from the PHP, the amount specified in OAR 410-1201295. This rule does not apply to providers that are Type A or Type B hospitals as they are paid in accordance with ORS 414.727.

(E) The PHP shall reimburse the hospital for services provided on or after January 1, 2012 using Medicare Severity DRG for inpatient services and Ambulatory Payment Classification (APC) for outpatient services or other alternative payment methods per Oregon Senate Bill 204 (2011) that incorporates the most recent Medicare payment methodologies for both inpatient and outpatient services established by the Centers for Medicare and Medicaid Services for hospital services and alternative payment methodologies, including but not limited to pay-for-performance, bundled payments, and capitation. An alternative payment methodology does not include reimbursement payment based on percentage of billed charges. This requirement does not apply to Type A or Type B hospitals as referenced in ORS 442.470. The PHP shall attest annually to OHA, in a manner to be prescribed, to PHP's compliance with section 3, 4, 6, and 8 of Oregon Senate Bill 204 (2011).

(F) On or after July 1, 2014, the Authority may require a CCO to continue to reimburse fully for the cost of covered services based on a cost-to-charge ratio to a rural Type A or Type B Critical Access Hospital that is determined to be at financial risk, as referenced in ORS 414.653. This would be determined upon an evaluation by an actuary retained by the Authority and on a case-by-case basis.

(7) Other services:

(a) Members enrolled with PHPs may receive certain services on a Division FFS basis. Such services are referred to as non-capitated services (see definition);

(b) Certain services must be authorized by the PHP or the Community Mental Health Program (CMHP) for some mental health services, even though such services are then paid by the Division on a Division FFS basis. Before providing services, providers should verify a member's eligibility via the web portal or AVR. For some mental health services, providers will need to contact the CMHP directly. In addition, the provider may call the PHP to obtain information about coverage for a particular service or preauthorization requirements;

(c) Services authorized by the PHP or CMHP are subject to the rules and limitations of the appropriate Division administrative rules and supplemental information including rates and billing instructions;

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DMAP 60-2013, f. & cert. ef. 10-31-13; DMAP 34-2014(Temp), f. 6-25-14, cert. ef. 7-1-14 thru 12-27-14

(d) Providers shall bill the Division directly for non-capitated services in accordance with billing instructions contained in the Division administrative rules and supplemental information;

(e) The Division shall pay at the Medicaid FFS rate in effect on the date the service is provided subject to the rules and limitations described in the relevant rules, contracts, billing instructions, and Division administrative rules and supplemental information;

(f) The Division shall not pay a provider for provision of services for which a PHP has received a capitation payment unless otherwise provided for in OAR 410-141-0120;

(g) When an item or service is included in the rate paid to a medical institution, a residential facility, or foster home, provision of that item or service is not the responsibility of the Division, AMH, nor a PHP except as provided for in Division administrative rules and supplemental information (e.g., capitated services that are not included in the nursing facility all-inclusive rate);

(h) FCHPs and PCOs that contract with FQHCs and RHCs shall negotiate a rate of reimbursement that is not less than the level and amount of payment that the FCHP or PCO would make for the same services furnished by a provider who is not an FQHC nor RHC, consistent with the requirements of BBA 4712(b)(2).

(8) Coverage of services through the Oregon Health Plan benefit package of covered services is limited by OAR 410-141-0500, excluded services and limitations for OHP clients.

(9) Members who are enrolled with a PCM receive services on a FFS basis:

(a) PCMs are paid a per member-per month payment to provide Primary Care Management Services in accordance with OAR 410-141-0410, Primary Care Manager Medical Management;

(b) PCMs provide primary care access, and management services for preventive services, primary care services, referrals for specialty services, limited inpatient hospital services, and outpatient hospital services. The Division payment for these PCM managed services is contingent upon authorization;

(c) All PCM managed services are covered services that shall be billed directly to the Division in accordance with billing instructions contained in the Division administrative rules and supplemental information;

(d) The Division shall pay at the Division FFS rate in effect on the date the service is provided subject to the rules and limitations described in the appropriate Division administrative rules and supplemental information.

(10) All members who are enrolled with a PCO receive inpatient hospital services on a Division FFS basis:

(a) Shall receive services directly from any appropriately enrolled Division provider;

(b) All services shall be billed directly to the Division in accordance with FFS billing instructions contained in the Division administrative rules and supplemental information;

(c) The Division shall pay at the Division FFS rate in effect on the date the service is provided subject to the rules and limitations described in the appropriate Division administrative rules and supplemental information.

(11) OHP clients who are not enrolled with a PHP receive services on a Division FFS basis:

(a) Services may be received directly from any appropriately enrolled Division provider;

(b) All services shall be billed directly to the Division in accordance with billing instructions contained in the Division administrative rules and supplemental information;

(c) The Division shall pay at the Division FFS rate in effect on the date the service is provided subject to the rules and limitations described in the appropriate Division administrative rules and supplemental information.

Stat. Auth.: ORS 413.042 & 414.065

Stats. Implemented: ORS 414.065

Hist.: HR 31-1993, f. 10-14-93, cert. ef. 2-1-94; HR 7-1994, f. & cert. ef. 2-1-94; HR 17-1995, f. 9-28-95, cert. ef. 10-1-95; HR 19-1996, f. & cert. ef. 10-1-96; HR 25-1997, f. & cert. ef. 10-1-97; OMAP 21-1998, f. & cert. ef. 7-1-98; OMAP 39-1999, f. & cert. ef. 10-1-99; OMAP 26-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 15-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 52-2001, f. & cert. ef. 10-1-01; OMAP 57-2002, f. & cert. ef. 10-1-02; OMAP 4-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 61-2003, 9-5-03, cert. ef. 10-1-03; OMAP 23-2004(Temp), f. & cert. ef. 3-23-04 thru 8-15-04; OMAP 33-2004, f. 5-26-04, cert. ef. 6-1-04; OMAP 37-2004(Temp), f. 5-27-04 cert. ef. 6-1-04 thru 11-15-04; OMAP 47-2004, f. 7-22-04 cert. ef. 8-1-04; OMAP 27-2005, f. 4-20-05, cert. ef. 5-1-05; OMAP 46-2005, f. 9-9-05, cert. ef. 10-1-05; OMAP 23-2006, f. 6-12-06, cert. ef. 7-1-06; OMAP 53-2006(Temp), f. 12-28-06, cert. ef. 1-1-07 thru 6-29-07; DMAP 9-2007, f. 6-14-07, cert. ef. 6-29-07; DMAP 45-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 16-2010, f. 6-11-10, cert. ef. 7-1-10; DMAP 42-2010, f. 12-28-10, cert. ef. 1-1-11; DMAP 29-2011, f. 10-19-11, cert. ef. 10-20-11; DMAP 48-2011(Temp), f. 12-23-11, cert. ef. 1-1-12 thru 6-25-12; Administrative correction, 8-1-12;

## 410-141-3420

### Billing and Payment

(1) Subject to other applicable Division billing rules, providers must submit all billings for CCO members following the timeframes in (a) and (b) below:

(a) Submit billings within twelve months of the date of service in the following cases:

(A) Pregnancy;

(B) Eligibility issues such as retroactive deletions or retroactive enrollments;

(C) Medicare is the primary payer, except where the CCO is responsible for the Medicare reimbursement;

(D) Other cases that could have delayed the initial billing to the CCO (which does not include failure of the provider to certify the member's eligibility); or

(E) Third Party Liability (TPL). Pursuant to 42 CFR 136.61, subpart G: Indian Health Services and the amended Public Law 93-638 under the Memorandum of Agreement that Indian Health Service and 638 Tribal Facilities are the payers of last resort and are not considered an alternative liability or TPL.

(b) Submit bills within four months of the date of service for all other cases.

(2) Providers must be enrolled with the Authority's Division of Medical Assistance Programs to be eligible for fee-for-service (FFS) payments. Mental health providers, except Federally Qualified Health Centers (FQHC), must be approved by the Local Mental Health Authority (LMHA) and the Authority's Addictions and Mental Health (AMH) division before enrollment with the Authority or to be eligible for CCO payment for services. Providers may be retroactively enrolled in accordance with OAR 410-120-1260, Provider Enrollment.

(3) Providers, including mental health providers, must be enrolled with the Authority as a Medicaid provider or an encounter-only provider prior to submission of encounter data to ensure the encounter is accepted.

(4) Providers shall verify, before providing services, that the member is eligible for coordinated care services on the date of service. Providers shall use the Authority tools and the CCO's tools, as applicable, to determine if the service to be provided is covered under the member's Oregon Health Plan benefit package of covered services. Providers shall also identify the party responsible for covering the intended service and seek preauthorizations from the appropriate payer before providing services. Before providing a non-covered service, the provider must complete a DMAP 3165, or facsimile, signed by the client, as described in OAR 141-120-1280.

(5) CCOs shall pay for all covered coordinated care services. These services must be billed directly to the CCO, unless the CCO or the Authority specifies otherwise. CCOs may require providers to obtain preauthorization to deliver certain coordinated care services.

(6) Payment by the CCO to participating providers for coordinated care services is a matter between the CCO and the participating provider except as follows:

(a) CCOs shall have procedures for processing preauthorization requests received from any provider. The procedures shall specify time frames for:

(A) Date stamping preauthorization requests when received;

(B) Determining within a specific number of days from receipt whether a preauthorization request is valid or non-valid;

(C) The specific number of days allowed for follow up on pended preauthorization requests to obtain additional information;

(D) The specific number of days following receipt of the additional information that a redetermination must be made;

(E) Providing services after office hours and on weekends that require preauthorization;

(F) Sending notice of the decision with appeal rights to the member when the determination is a denial of the requested service as specified in OAR 410-141-3263.

(b) CCOs shall make a determination on at least 95 percent of valid preauthorization requests within two working days of receipt of a preauthorization or reauthorization request related to urgent services, alcohol and drug services, or care required while in a skilled nursing facility. Preauthorization for prescription drugs must be completed and the pharmacy notified within 24 hours. If a preauthorization for a prescription cannot be completed within the 24 hours, the CCO must provide for the dispensing of at least a 72-hour supply if there is an immediate medical need for

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the drug. CCOs shall notify providers of the determination within two working days of receipt of the request;

(c) For expedited prior authorization requests in which the provider indicates, or the CCO determines, that following the standard timeframe could seriously jeopardize the member's life or health or ability to attain, maintain, or regain maximum function:

(A) The CCO must make an expedited authorization decision and provide notice as expeditiously as the member's health or mental health condition requires and no later than three working days after receipt of the request for service;

(B) The CCO may extend the three working day time period no more than 14 calendar days if the member requests an extension or if the CCO justifies to the Authority a need for additional information and how the extension is in the member's best interest.

(d) For all other preauthorization requests, CCOs shall notify providers of an approval, a denial, or the need for further information within 14 calendar days of receipt of the request as outlined in 410-141-3263. CCOs must make reasonable efforts to obtain the necessary information during the 14-day period. However, the CCO may use an additional 14 days to obtain follow-up information if the CCO justifies (to the Authority upon request) the need for additional information and how the delay is in the interest of the member. The CCO shall make a determination as the member's health or mental health condition requires, but no later than the expiration of the extension.

(7) CCOs shall have written procedures for processing payment claims submitted from any source. The procedures shall specify time frames for:

(a) Date stamping claims when received;

(b) Determining within a specific number of days from receipt whether a claim is valid or non-valid;

(c) The specific number of days allowed for follow up of pended claims to obtain additional information;

(d) The specific number of days following receipt of additional information that a determination must be made; and

(e) Sending notice of the decision with appeal rights to the member when the determination is made to deny the claim;

(f) CCOs shall pay or deny at least 90 percent of valid claims within 45 calendar days of receipt and at least 99 percent of valid claims within 60 calendar days of receipt. CCOs shall make an initial determination on 99 percent of all claims submitted within 60 calendar days of receipt;

(g) CCOs shall provide written notification of CCO determinations when the determinations result in a denial of payment for services as outlined in 410-141-3263;

(h) CCOs may not require providers to delay billing to the CCO;

(i) CCOs may not require Medicare be billed as the primary insurer for services or items not covered by Medicare or require non-Medicare approved providers to bill Medicare;

(j) CCOs may not deny payment of valid claims when the potential TPR is based only on a diagnosis, and no potential TPR has been documented in the member's clinical record;

(k) CCOs may not delay or deny payments because a co-payment was not collected at the time of service.

(8) CCOs shall pay for Medicare coinsurances and deductibles up to the Medicare or CCOs allowable for covered services the member receives within the CCO for authorized referral care and urgent care services or emergency services the member receives from non-participating providers. CCOs may not pay for Medicare coinsurances and deductibles for non-urgent or non-emergent care members receive from non-participating providers.

(9) CCOs shall pay transportation, meals, and lodging costs for the member and any required attendant for services that the CCO has arranged and authorized when those services are not available within the state, unless otherwise approved by the Authority.

(10) CCOs shall pay for covered services provided by a non-participating provider that was not preauthorized if the following conditions exist:

(a) It can be verified that the participating provider ordered or directed the covered services to be delivered by a non-participating provider; and

(b) The covered service was delivered in good faith without the preauthorization; and

(c) It was a covered service that would have been preauthorized with a participating provider if the CCO's referral procedures had been followed;

(d) The CCO shall pay non-participating providers (providers enrolled with the Authority that do not have a contract with the CCO) for covered services that are subject to reimbursement from the CCO in the

amount specified in OAR 410-120-1295. This rule does not apply to providers that are Type A or Type B hospitals;

(e) CCOs shall reimburse hospitals for services provided on or after January 1, 2012 using Medicare Severity DRG for inpatient services and Ambulatory Payment Classification (APC) for outpatient services or other alternative payment methods that incorporate the most recent Medicare payment methodologies for both inpatient and outpatient services established by CMS for hospital services and alternative payment methodologies, including but not limited to pay-for-performance, bundled payments, and capitation. An alternative payment methodology does not include reimbursement payment based on percentage of billed charges. This requirement does not apply to Type A or Type B hospitals as referenced in ORS 442.470. CCOs shall attest annually to the Authority in a manner to be prescribed to CCO's compliance with these requirements.

(f) On or after July 1, 2014, the Authority may require a CCO to continue to reimburse fully for the cost of covered services based on a cost-to-charge ratio to a rural Type A or Type B Critical Access Hospital that is determined to be at financial risk, as referenced in ORS 414.653. This would be determined upon an evaluation by an actuary retained by the Authority and on a case-by-case basis.

(11) Members may receive certain services on a Fee for Service (FFS) basis:

(a) Certain services must be authorized by the CCO or the Community Mental Health Program (CMHP) for some mental health services, even though the services are then paid by the Authority on a FFS basis. Before providing services, providers must verify a member's eligibility using the web portal or AVR;

(b) Services authorized by the CCO or CMHP are subject to the rules and limitations of the appropriate Authority administrative rules and supplemental information including rates and billing instructions;

(c) Providers shall bill the Authority directly for FFS services in accordance with billing instructions contained in the Authority administrative rules and supplemental information;

(d) The Authority shall pay at the Medicaid FFS rate in effect on the date the service is provided subject to the rules and limitations described in the relevant rules, contracts, and billing instructions;

(e) The Authority may not pay a provider for provision of services for which a CCO has received a CCO payment unless otherwise provided for in rule;

(f) When an item or service is included in the rate paid to a medical institution, a residential facility, or foster home, provision of that item or service is not the responsibility of the Authority or a CCO except as provided in Authority administrative rules and supplemental information (e.g., coordinated care services that are not included in the nursing facility all-inclusive rate);

(g) CCOs that contract with FQHCs and RHCs shall negotiate a rate of reimbursement that is not less than the level and amount of payment that the CCO would pay for the same service furnished by a provider who is not an FQHC nor RHC, consistent with the requirements of BBA 4712(b)(2).

(12) Coverage of services through the Oregon Health Plan benefit package of covered services is limited by OAR 410-141-0500, excluded services and limitations for OHP clients.

Stat. Auth.: ORS 414.032, 414.615, 414.625, 414.635, 414.651

Stats. Implemented: ORS 414.610 – 685 OL 2011, Ch 602 Sec. 13, 14, 16, 17, 62, 64(2), & 65

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 38-2013(Temp), f. 7-8-13, cert. ef. 7-9-13 thru 1-5-14; DMAP 60-2013, f. & cert. ef. 10-31-13; DMAP 65-2013, f. & cert. ef. 11-29-13; DMAP 34-2014(Temp), f. 6-25-14, cert. ef. 7-1-14 thru 12-27-14

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**Rule Caption:** Remove the Sunset Date from the "Third Trimester Pregnancy Enrollment Exemption"

**Adm. Order No.:** DMAP 35-2014(Temp)

**Filed with Sec. of State:** 6-25-2014

**Certified to be Effective:** 7-1-14 thru 12-27-14

**Notice Publication Date:**

**Rules Amended:** 410-141-3060

**Subject:** The Division needs to amend this rule to remove the sunset date of July 1, 2014 for the third trimester pregnancy enrollment exemption included in this rule. This allows Oregon Health Plan members in their third trimester to receive exemption from CCO managed care enrollment into Oregon Health Plan.

**Rules Coordinator:** Sandy Cafourek — (503) 945-6430

# ADMINISTRATIVE RULES

## 410-141-3060

### Enrollment Requirements in a CCO

(1) A client who is eligible for or receiving health services must enroll in a CCO as required by ORS 414.631, except as provided in ORS 414.631(2), (3), (4) and (5), and 414.632(2) or exempted by this rule.

(2) If, upon application or redetermination, a client does not select a CCO, the Authority shall enroll the client and the client's household in a CCO that has adequate health care access and capacity.

(3) For existing members of a PHP that has transitioned to a CCO, the Authority shall enroll those members in the CCO when the Authority certifies and contracts with the CCO. The Authority shall provide notice to the enrollees 30 days before the effective date.

(4) Existing members of a PHP that is on the path to becoming a CCO shall retain those members. The Authority shall enroll those members in the CCO when certification and contracting are complete. The Authority shall provide notice to the clients 30 days before the effective date.

(5) Unless otherwise exempted by sections (17) and (18) of this rule, existing clients receiving their physical health care services on a fee-for-service (FFS) basis shall enroll in a CCO serving their area that has adequate health care access and capacity. They must enroll by November 1, 2012. The Authority shall send a notice to the clients 30 days before the effective date.

(6) The following apply to clients receiving physical health care services on a fee-for-service basis but managed or coordinated behavioral health services:

(a) The Authority shall enroll the client in a CCO that is serving the client's area before November 1, 2012;

(b) The client shall receive their behavioral health care services from that CCO;

(c) The client shall continue to receive their physical health care services on a fee-for-service basis; and

(d) On or after November 1, 2012, the Authority shall enroll the client in a CCO for both physical health and behavioral health care services, unless otherwise exempted by sections (17) and (18) of this rule.

(e) On or after November 1, 2012, for the client exempt from coordinated physical health services by sections (17) and (18) shall receive managed or coordinated behavioral health services from a CCO or MHO.

(7) The following apply to clients enrolled in Medicare:

(a) A client may 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, may enroll in a CCO, even if the CCO does not have a corresponding Medicare Advantage plan.

(c) A client may 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 may enroll with a CCO even if the client is enrolled in Medicare Advantage with another entity.

(8) From August 1, 2012, until November 1, 2012, enrollment is required in service areas with adequate health care access and capacity to provide health care services through a CCO or PHP. The following outlines the priority of enrollment during this period in service areas where enrollment is required:

(a) Priority 1: The client must enroll in a CCO that serves that area and has adequate health care access and capacity;

(b) Priority 2: The client must enroll in a PHP if:

(A) A PHP serves an area that a CCO does not serve; or

(B) A PHP serves an area that a CCO serves, but the CCO has inadequate health care access and capacity to accept new members;

(c) Priority 3: The client shall receive services on a fee-for-service basis.

(9) From August 1, 2012, until November 1, 2012, enrollment is voluntary in service areas without adequate access and capacity to provide health care services through a CCO or PHP. If a client decides to enroll in a CCO or PHP, the priority of enrollment in section (8) applies.

(10) On or after November 1, 2012, CCO enrollment is required in all areas. The following outlines the priority of options to enroll in all service areas:

(a) Priority 1: The client must enroll in a CCO that serves that area and has adequate health care access and capacity;

(b) Priority 2: The client must enroll in a PHP on the path to becoming a CCO if:

(A) The PHP serves an area that a CCO does not serve; or

(B) The PHP serves an area that a CCO serves, but the CCO has inadequate health care services capacity to accept new members;

(c) Priority 3: The client must enroll in a PHP that is not on the path to becoming a CCO if:

(A) The PHP serves an area that a CCO does not serve; or

(B) The PHP serves an area that a CCO serves, but the CCO has inadequate health care access or capacity to accept new members;

(d) Priority 4: The client shall receive physical services on a fee-for-service basis.

(11) On or after July 1, 2013, a client must enroll in a CCO or managed dental care organization (DCO) in a service area where a CCO or DCO has adequate dental care access and capacity, and a CCO or DCO is open to enrollment.

(12) If a client receives physical health care through a PHP, PCM, or on a fee-for-service basis under circumstances allowed by this rule, the client must enroll in a CCO or mental (behavioral) health organization (MHO) in a service area where MHO enrollment is required. The following determines if a service area requires CCO or MHO enrollment:

(a) CCO: The service area has adequate CCO behavioral health care access and capacity;

(b) MHO: A CCO does not serve in the area; or

(c) MHO: A CCO serves the area, but the CCO has inadequate health care access and capacity to accept new members;

(13) From August 1, 2012, until November 1, 2012, if a service area changes from required 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 410-41-3080.

(14) At the time of application or recertification, the primary person in the household shall select the CCO on behalf of all household members on the same household case. If the client is not able to choose a CCO, the client's representative shall make the selection.

(15) The Department or OYA shall select the CCO for a child in the legal custody of the Department or OYA except for children in subsidized adoptions.

(16) The following populations are exempt from CCO enrollment:

(a) Populations expressly exempted by ORS 414.631(2)(a), (b) and (c), which includes:

(A) Persons who are non-citizens who are eligible for labor and delivery services and emergency treatment services;

(B) Persons who are American Indian and Alaskan Native beneficiaries; and

(C) Persons who are dually eligible for Medicare and Medicaid and enrolled in a program of all-inclusive care for the elderly.

(b) Newly eligible clients are exempt from enrollment with a CCO if the client became eligible when admitted as an inpatient in a hospital. The client shall receive health care services on a fee-for-service basis only until the hospital discharges the client. The client is not exempt from enrollment in a DCO. The client is not exempt from enrollment in a DCO.

(c) Children in the legal custody of the Department or OYA 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 fee-for-service basis is not available; or

(B) Enrollment would preserve continuity of care.

(d) Clients with major medical health insurance coverage, also known as third party liability, except as provided in OAR 410-141-3050;

(e) Clients receiving prenatal services through the Citizen/Alien Waivered-Emergency Medical program; and

(f) Clients receiving premium assistance through the Specified Low-Income Medicare Beneficiary, Qualified Individuals, Qualified Disabled Working Individuals and Qualified Medicare Beneficiary programs.

(17) The following populations are exempt from CCO enrollment until specified below:

(a) From August 1, 2012, until November 1, 2012, children under 19 years of age who are medically fragile and who have special health care needs. Beginning November 1, 2012, 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) Women who are in their third trimester of pregnancy when first determined eligible for OHP or at redetermination may qualify as identified below to receive OHP benefits on a fee-for-service basis until 60 days after the birth of her child. After the 60 day period the OHP member must enroll in a CCO. In order to qualify for the FFS third trimester exemption the member must:

(A) Not have been enrolled with a service area CCO, FCHP, or PCO during the three months preceding redetermination,

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(B) Have an established relationship with a licensed qualified practitioner who is not a participating provider with the service area CCO, FCHP, or PCO and wishes to continue obtaining maternity services from the non-participating provider on a FFS basis; and

(C) Make a request to change to FFS prior to the date of the delivery if enrolled with a CCO, FCHP, or PCO.

(c) From August 1, 2012 until November 1, 2012, clients receiving health care services through the Breast and Cervical Cancer Program are exempt. Beginning November 1, 2012, enrollment is required;

(d) Existing clients who had organ transplants are exempt until the Authority enrolls them in a CCO on a case-by-case basis; and

(e) From August 1, 2012, until November 1, 2012, clients with end-stage renal disease. Beginning November 1, 2012, enrollment is required.

(18) The following clients who are exempt from CCO enrollment and who receive services on a fee-for-service basis may enroll in a CCO:

(a) Clients who are eligible for both Medicare and Medicaid;

(b) Clients who are American Indian and Alaskan Native beneficiaries;

(19) The Authority may exempt clients or 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. Other just causes include the following considerations:

(a) Enrollment would pose a serious health risk; and

(b) The Authority finds no reasonable alternatives.

(20) 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.

(21) Coordinated care services shall begin on the first day 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 members who are re-enrolled within 30 calendar days of disenrollment, the date of enrollment shall be the date specified by the Authority that may be retroactive to the date of disenrollment;

(c) 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

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**Rule Caption:** Eliminate OHP Standard; Expand Age Fluoride in Medical Setting; Incorporate changes to Prioritized List

**Adm. Order No.:** DMAP 36-2014

**Filed with Sec. of State:** 6-27-2014

**Certified to be Effective:** 6-27-14

**Notice Publication Date:** 6-1-2014

**Rules Amended:** 410-123-1060, 410-123-1200, 410-123-1260, 410-123-1540

**Rules Repealed:** 410-123-1060(T), 410-123-1200(T), 410-123-1260(T), 410-123-1540(T)

**Subject:** This rulemaking incorporates three prior temporary actions amending OAR 410-123-1060, 410-123-1200, 410-123-1260, and 410-123-1540. The first, "Elimination of OHP Standard Benefit Plan effective January 1, 2014," was effective 1/1/14 through 6/30/2014. The second, "Expand Age for Topical Fluoride Varnish in Medical Setting and Update Language for Dental Integration," was effective 2/28/2014 through 6/30/2014. The third, "Elimination of OHP Standard; Expand Age Fluoride in Medical Setting; Incorporate changes to Prioritized List," was effective 4/1/14 through 6/30/2014. This filing makes permanent all of these previous temporary rule changes as follows:

OAR 410-123-1060 to reflect the elimination of DMAP's OHP Standard benefit package in compliance with the Affordable Care Act;

OAR 410-123-1200 to reflect the elimination of DMAP's OHP Standard benefit package in compliance with the Affordable Care Act and to add two dental services (carries risk assessment and docu-

mentation and gingival irrigation) to the list of services that are not separately reimbursed. Both services have new Current Dental Terminology codes for 2014;

OAR 410-123-1260 to reflect the elimination of DMAP's OHP Standard benefit package in compliance with the Affordable Care Act, to restore language that was inadvertently removed from a previous rule filing, to expand the age for topical fluoride varnish in medical setting, and to remove misleading language concerning coverage of D0191 in medical settings. The amendment also aligns OHP Plus coverage to changes by the Health Evidence Review Commission's Prioritized List of Health Services effective April 1, 2014; and

OAR 410-123-1540 to more clearly state existing policy for clients eligible for OHP through the CAWEM (Citizen/Alien-Waived Emergency Medical).

**Rules Coordinator:** Sandy Cafourek — (503) 945-6430

## 410-123-1060

### Definition of Terms

(1) Anesthesia — The following depicts the Division of Medical Assistance Programs' (Division) usage of certain anesthesia terms; however, for further details refer also to the Oregon Board of Dentistry administrative rules (OAR chapter 818, division 026):

(a) Conscious Sedation:

(A) Deep Sedation — A drug-induced depression of consciousness during which patients cannot be easily aroused but respond purposefully following repeated or painful stimulation. The ability to independently maintain ventilatory function may be impaired. Patients may require assistance maintaining a patient airway, and spontaneous ventilation may be inadequate. Cardiovascular function is usually maintained;

(B) Minimal Sedation — A minimally depressed level of consciousness produced by non-intravenous pharmacological methods that retains the patient's ability to independently and continuously maintain an airway and respond normally to tactile stimulation and verbal command. When the intent is minimal sedation for adults, the appropriate initial dosing of a single non-intravenous pharmacological method is no more than the maximum recommended dose (MRD) of a drug that can be prescribed for unmonitored home use. Nitrous oxide/oxygen may be used in combination with a single non-intravenous pharmacological method in minimal sedation;

(C) Moderate Sedation — A drug-induced depression of consciousness during which the patient responds purposefully to verbal commands, either alone or accompanied by light tactile stimulation. No interventions are required to maintain a patient airway, and spontaneous ventilation is adequate. Cardiovascular function is usually maintained;

(b) General Anesthesia — A drug-induced loss of consciousness during which the patient is not arousable even by painful stimulation. The ability to independently maintain ventilatory function is often impaired. Patients often require assistance in maintaining a patient airway, and positive pressure ventilation may be required because of depressed spontaneous ventilation or drug-induced depression of neuromuscular function. Cardiovascular function may be impaired;

(c) Local Anesthesia — The elimination of sensation, especially pain, in one part of the body by the topical application or regional injection of a drug;

(d) Nitrous Oxide Sedation — An induced controlled state of minimal sedation produced solely by the inhalation of a combination of nitrous oxide and oxygen in which the patient retains the ability to independently and continuously maintain an airway and to respond purposefully to physical stimulation and to verbal command;

(2) Citizen/Alien-Waived Emergency Medical (CAWEM) — Refer to OAR 410-120-0000 for definition of clients who are eligible for limited emergency services under the CAWEM benefit package. The definition of emergency services does not apply to CAWEM clients. OAR 410-120-1210 provides a complete description of limited emergency coverage pertaining to the CAWEM benefit package.

(3) Covered Services — Services on the Health Evidence Review Commission's (HERC) Prioritized List of Health Services (Prioritized List) that have been funded by the legislature and identified in specific program rules. Services are limited as directed by General Rules — Excluded Services and Limitations (OAR 410-120-1200), the Division's Dental Services Program rules (chapter 410, division 123), and the Prioritized List. Services that are not considered emergency dental services as defined by 410-123-1060(12) are considered routine services.

(4) Dental Hygienist — A person licensed to practice dental hygiene pursuant to state law.

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(5) Dental Hygienist with Expanded Practice Dental Hygiene Permit (EPDH) — A person licensed to practice dental hygiene with an EPDH permit issued by the Board of Dentistry and within the scope of an EPDH permit pursuant to state law.

(6) Dental Practitioner — A person licensed pursuant to state law to engage in the provision of dental services within the scope of the practitioner's license and/or certification.

(7) Dental Services — Services provided within the scope of practice as defined under state law by or under the supervision of a dentist or dental hygienist or denture services provided within the scope of practice as defined under state law by a denturist.

(8) Dental Services Documentation — Shall meet the requirements of the Oregon Dental Practice Act statutes; administrative rules for client records and requirements of OAR 410-120-1360, "Requirements for Financial, Clinical and Other Records;" and any other documentation requirements as outlined in the Dental rules.

(9) Dentally Appropriate — In accordance with OAR 410-141-0000, services that are required for prevention, diagnosis, or treatment of a dental condition and that are:

(a) Consistent with the symptoms of a dental condition or treatment of a dental condition;

(b) Appropriate with regard to standards of good dental practice and generally recognized by the relevant scientific community, evidence-based medicine, and professional standards of care as effective;

(c) Not solely for the convenience of an OHP member or a provider of the service; and

(d) The most cost effective of the alternative levels of dental services that can be safely provided to a member.

(10) Dentist — A person licensed to practice dentistry pursuant to state law.

(11) Denturist — A person licensed to practice denture technology pursuant to state law.

(12) Direct Pulp Cap — The procedure in which the exposed pulp is covered with a dressing or cement that protects the pulp and promotes healing and repair.

(13) Emergency Services:

(a) Refer to OAR 410-120-0000 for the complete definition of emergency services. (This definition of emergency services does not apply to CAWEM clients. 410-120-1210 provides a complete description of limited emergency coverage pertaining to the CAWEM benefit package);

(b) Covered services for an emergency dental condition manifesting itself by acute symptoms of sufficient severity requiring immediate treatment. This includes services to treat the following conditions:

(A) Acute infection;

(B) Acute abscesses;

(C) Severe tooth pain;

(D) Unusual swelling of the face or gums; or

(E) A tooth that has been avulsed (knocked out);

(c) The treatment of an emergency dental condition is limited only to covered services. The Division recognizes that some non-covered services may meet the criteria of treatment for the emergency condition; however, this rule does not extend to those non-covered services. Routine dental treatment or treatment of incipient decay does not constitute emergency care;

(14) Hospital Dentistry — Dental services normally done in a dental office setting but due to specific client need (as detailed in OAR 410-123-1490) are provided in an ambulatory surgical center, inpatient, or outpatient hospital setting under general anesthesia (or IV conscious sedation, if appropriate).

(15) Medical Practitioner — A person licensed pursuant to state law to engage in the provision of medical services within the scope of the practitioner's license and certification.

(16) Procedure Codes — The procedure codes in the Dental Services rulebook (OAR chapter 410, division 123) refer to Current Dental Terminology (CDT), unless otherwise noted. Codes listed in this rulebook and other documents incorporated in rule by reference are subject to change by the American Dental Association (ADA) without notification.

(17) Standard of Care — What reasonable and prudent practitioners would do in the same or similar circumstances.

Stat. Auth.: ORS 413.042, 414.065 & 414.707

Stats. Implemented: ORS 414.065 & 414.707

Hist.: HR 3-1994, f. & cert. ef. 2-1-94; 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 17-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 48-2002, f. & cert. ef. 10-1-02; OMAP 49-2004, f. 7-28-04 cert. ef. 8-1-04; DMAP 25-2007, f. 12-11-07, cert. ef. 1-1-08; DMAP 16-2009 f. 6-12-09, cert. ef. 7-1-09; 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 75-

2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14; DMAP 36-2014, f. & cert. ef. 6-27-14

## 410-123-1200

### Services Not To Be Billed Separately

(1) Services that are not to be billed separately may be included in the Current Dental Terminology (CDT) codebook and may not be listed as combined with another procedure; however, they are considered to be either minimal, included in the examination, part of another service, or included in routine post-op or follow-up care.

(2) The following services do not warrant an additional fee:

(a) Alvelectomy/Alveoloplasty in conjunction with extractions;

(b) Cardiac and other monitoring;

(c) Caries risk assessment and documentation;

(d) Curettage and root planing — per tooth;

(e) Diagnostic casts;

(f) Dietary counseling;

(g) Direct pulp cap;

(h) Discing;

(i) Dressing change;

(j) Electrosurgery;

(k) Equilibration;

(l) Gingival curettage — per tooth;

(m) Gingival irrigation;

(n) Gingivectomy or gingivoplasty to allow for access for restorative procedure, per tooth;

(o) Indirect pulp cap;

(p) Local anesthesia;

(q) Medicated pulp chambers;

(r) Occlusal adjustments;

(s) Occlusal analysis;

(t) Odontoplasty;

(u) Oral hygiene instruction;

(v) Periodontal charting, probing;

(w) Post removal;

(x) Polishing fillings;

(y) Post extraction treatment for alveolitis (dry socket treatment) if done by the provider of the extraction;

(z) Pulp vitality tests;

(aa) Smooth broken tooth;

(bb) Special infection control procedures;

(cc) Surgical procedure for isolation of tooth with rubber dam;

(dd) Surgical splint;

(ee) Surgical stent; and

(ff) Suture removal.

Stat. Auth.: ORS 413.042, 414.065 & 414.707

Stats. Implemented: ORS 414.065 & 414.707

Hist.: HR 3-1994, f. & cert. ef. 2-1-94; HR 32-1994, f. & cert. ef. 11-1-94; OMAP 48-2002, f. & cert. ef. 10-1-02; DMAP 25-2007, f. 12-11-07, cert. ef. 1-1-08; DMAP 13-2013, f. 3-27-13, cert. ef. 4-1-13; DMAP 75-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14; 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

## 410-123-1260

### OHP Plus 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 an early 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 by reference and posted on the Division website in the Dental Services Provider Guide document at [www.oha.state.or.us/policy/healthplan/guides/dental/main.html](http://www.oha.state.or.us/policy/healthplan/guides/dental/main.html);

(b) Restorative, periodontal, and prosthetic treatments:

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(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) Diagnostic Services:

(a) Exams:

(A) For children under 19 years of age:

(i) The Division shall reimburse exams (billed as 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 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 should not bill D0140 and D0170 for routine dental visits;

(D) The Division only covers oral exams 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 furnished 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.

(3) 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) For children under 19 years of age, topical fluoride varnish may be applied by a medical practitioner during a medical visit:

(i) Bill the Division directly when the client is fee-for-service (FFS), is enrolled in a CCO that does not include integrated dental services, or is enrolled in a PHP that does not include integrated dental services;

(ii) Bill the client's Coordinated Care Organization (CCO) if the client is enrolled in a CCO that includes integrated dental services;

(iii) Bill using a professional claim format with the appropriate CDT code (D1206 — Topical Fluoride Varnish);

(D) 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 the following 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;

(E) 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;

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(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;

(C) For tobacco cessation services provided during a medical visit, follow criteria outlined in OAR 410-130-0190;

(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.

(4) 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 acrylic heat or light cured crowns (D2970 temporary crown, fractured tooth) — allowed only for anterior permanent teeth;

(D) 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;

(E) 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;

(F) Crown repair (D2980) is limited to only anterior teeth.

(5) 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 prosthetics;

(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;



# ADMINISTRATIVE RULES

(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 relines 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 relines 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 relines procedures:

(A) For clients through age 20, the Division limits payment for relines of complete or partial dentures to once every three years;

(B) For clients age 21 and older, the Division limits payment for relines 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 “flip-pers”):

(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.

(8) 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.

(9) 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 ICD9 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, and unusual swelling of the face or gums;

(C) The Division does not cover alveoplasty 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.

(10) Orthodontia Services:

(a) The Division limits orthodontia services and extractions to eligible clients:

(A) With the ICD-9-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;

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(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.

(11) 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 (D9220, D9221, D9241 and D9242);

(B) The Division reimburses providers for general anesthesia or IV sedation as follows:

(i) D9220 or D9241: For the first 30 minutes;

(ii) D9221 or D9242: For each additional 15-minute period, up to three hours on the same day of service. 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 & 414.707

Stats. Implemented: ORS 414.065 & 414.707

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

## 410-123-1540

### Citizen/Alien-Waived Emergency Medical (CAWEM)

(1) CAWEM clients who are not pregnant (benefit package identifier CWM) have a limited benefit package. Dental coverage is limited to dental services provided in an emergency department hospital setting. Refer to OAR 410-120-1210(4)(e).

(2) CAWEM clients who are pregnant (benefit package identifier CWX) receive the OHP Plus dental benefit package as described in OAR 410-123-1260.

(3) All CAWEM clients are exempt from enrollment in a Dental Care Organization (DCO) or Coordinated Care Organization (CCO). Providers must bill the Division directly for any allowable services provided.

Stat. Auth.: ORS 413.042 & 414.065

Stats. Implemented: ORS 414.065

Hist.: OMAP 17-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 48-2002, f. & cert. ef. 10-1-02; DMAP 18-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 31-2010, f. 12-15-10, cert. ef. 1-1-11; DMAP 75-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14; DMAP 36-2014, f. & cert. ef. 6-27-14

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**Rule Caption:** Amending PDL May 23, July 25, Sept 26, 2013, Jan 30, 2014 DUR/P&T Action, SR Contract Updates

**Adm. Order No.:** DMAP 37-2014

**Filed with Sec. of State:** 6-30-2014

**Certified to be Effective:** 6-30-14

**Notice Publication Date:** 6-1-2014

**Rules Amended:** 410-121-0030

**Rules Repealed:** 410-121-0030(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:

410-121-0030:

Preferred:

Butorphanol Tartrate Spray

Sumatriptan Succinate

Peginterferon Alpha-2A

Peginterferon Alpha-2A Sub Q

Tricor<sup>TM</sup>

Trilipix<sup>TM</sup>

Bacitracin Zinc / Polymyx B Sulfate

Somatropin (Norditropin<sup>®</sup>)

Mesalamine (Lialda<sup>®</sup>)

Golimumab (Simponi<sup>®</sup>)

Valproic Acid solution

Interferon Beta-1A / Albumin (Refib<sup>TM</sup>)

Interferon Beta-1B (Betaseron<sup>TM</sup>)

Carbidopa / Levodopa tablet ER

Metadate<sup>TM</sup>

Methylphenidate (Daytrana<sup>TM</sup>)

Buprenorphine

Buprenorphine-Naloxone (Suboxone<sup>TM</sup>)

Buprenorphine HCL / Naloxone (Suboxone<sup>TM</sup>)

Ipratropium / Albuterol Sulfate (Combivent Respimat<sup>TM</sup>)

Budesonide (Pulmicort Flexhaler<sup>®</sup>)

Budesonide / Formoterol Fumarate (Symbicort<sup>®</sup>)

Benzonate

Guaifenesin

Guaifenesin / Codeine Phosphate

Guaifenesin / Dextromethorphan

Pseudoephedrine HCL

Atomoxetine HCL (Strattera<sup>®</sup>)

Chlorpromazine HCL

Fluphenazine Decanoate

Fluphenazine HCL

Haloperidol

Haloperidol Decanoate

Haloperidol Lactate

Loxapine HCL

Loxapine Succinate

Perhenazine

Promazine HCL

Thioridazine HCL

Thiothixene

Thiothixene HCL

Trifluoperazine HCL

Triflupromazine HCL

Sofosbuvir (Sovaldi<sup>®</sup>)

# ADMINISTRATIVE RULES

Simeprevir (Olysio®)  
Estradiol Transdermal patch (Vivelle Dot®, Alora®)  
Tobi® - Brand only  
Non-Preferred:  
Methadone HCL  
Tramadol HCL  
Imitrex®  
Zolmitriptan  
Fenofibrate, Nanocrystallized  
Spinosad (Natroba®)  
Testosterone patch TD24  
Dextroamphetamine Sulfate  
Ciclesonide  
Montelukast Sodium gram pack  
Zafirlukast  
Insulin Lispro (Humalog®)  
Insulin NPL / Insulin Lispro (Humalog Mix 50/50®)  
Insulin NPL / Insulin Lispro (Humalog Mix 75/25®)  
Nadolol  
Captopril  
Captopril/ Hydrochlorothiazide  
Fosinopril Sodium  
Fosinopril/ Hydrochlorothiazide  
Moexipril HCL  
Moexipril/ Hydrochlorothiazide  
Quinapril HCL  
Quinapril/ Hydrochlorothiazide  
Trandolapril

**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 fee-for-service clients of the Oregon Health Plan shall have access to the most effective prescription drugs appropriate for their clinical conditions at the best possible price:

(a) Licensed health care practitioners (informed by the latest peer reviewed research) make decisions concerning the clinical effectiveness of the prescription drugs;

(b) The licensed health care practitioners also consider the health condition of a client or characteristics of a client including the client's gender, race, or ethnicity.

(2) PMPDP Preferred Drug List (PDL):

(a) The PDL is the primary tool the Division developed to inform licensed health care practitioners about the results of the latest peer-reviewed research and cost effectiveness of prescription drugs;

(b) The PDL (as defined in 410-121-0000(cc)) consists 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 drug(s);

(b) The Division shall determine the drugs selected in (3)(a) that are available for the best possible price and shall consider any input from the P&T about other FDA-approved drug(s) in the same class that are available for a lesser relative price. The Division shall determine relative price using the methodology described in subsection (4);

(c) The Division shall evaluate selected drugs for the drug classes periodically:

(A) Evaluation shall occur more frequently at the discretion of the Division if new safety information or the release of new drugs in a class or other information that 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 changes or revisions to the PDL using the rulemaking process and shall publish the changes on the Division's Pharmaceutical Services provider rules webpage.

(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, subject to the regulations outlined in OAR 410-121-0155;

(b) The brand name medication is listed as preferred on the PDL.

(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 in instances:

(A) Where the prescriber in their professional judgment determines the non-preferred drug is medically appropriate after consulting with the Division or the Oregon Pharmacy Help Desk; or

(B) Where the prescriber requests an exception subject to the requirement of (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 May 1, 2014 is incorporated in rule by reference and is found on our webpage at [www.orpdl.org](http://www.orpdl.org).

Stat. Auth.: ORS 409.025, 409.040, 409.110, 414.065, 413.042 & 414.325

Stats. Implemented: ORS 414.065

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

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**Rule Caption:** Amending Prior Authorization Guide May 23, July 25, Sept. 26, 2013, and Jan 30, March 27, 2014 DUR/P&T Action

**Adm. Order No.:** DMAP 38-2014

**Filed with Sec. of State:** 6-30-2014

**Certified to be Effective:** 6-30-14

**Notice Publication Date:** 6-1-2014

**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:

410-121-0040:

Hydroxyprogesterone Caproate (Makena®) — new criteria

Analgesics, Non-Steroidal Anti-Inflammatory Drugs — updated criteria

Antiemetics — updated criteria

Anti-Parkinsons Agents — updated criteria

Cysteamine Delayed Release — new criteria

Fentanyl Transmucosal, Buccal, and Sprays — updated criteria

Hepatitis C Oral Protease Inhibitors/Triple Therapy — updated criteria

Incretin Enhancers — updated criteria

# ADMINISTRATIVE RULES

Incretin Mimetics — updated criteria  
LABA / ICS Inhalers — updated criteria  
Mipomersen and Lomitapide — new criteria  
Naltrexone Extended Release Inj (Vivitrol®) — new criteria  
Omega-3 fatty acids — new criteria  
Oral MS Drugs — updated criteria  
Oral Direct Factor Xa Inhibitor — updated criteria  
Oral Direct Thrombin Inhibitor — updated criteria  
Repository Corticotropin Injection (Acthar Gel®) — new criteria  
Roflumilast — updated criteria  
Sofosbuvir (Sovaldi®)  
Saproterin — updated criteria  
Skeletal Muscle Relaxants — updated criteria  
Rules Coordinator: Sandy Cafourek—(503) 945-6430

## 410-121-0040

### Prior Authorization Required for Drugs and Products

(1) Prescribing practitioners are responsible for obtaining prior authorization (PA) for the drugs and categories of drugs requiring PA in this rule using the procedures required 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 as described in this rule are subject to the following requirements for coverage:

(a) Each drug shall be prescribed for conditions funded by Oregon Health Plan (OHP) in a manner consistent with the Oregon Health Services Commission's Prioritized List of Health Services (OAR 410141-0480 through 410-141-0520). If the medication is for a non-covered diagnosis, the medication shall not be covered unless there is a co-morbid condition for which coverage would be extended. The use of the medication shall meet corresponding treatment guidelines, 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 Oregon Health Authority (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 OHP Fee-For-Service Pharmacy PA Criteria Guide (PA Criteria Guide) dated May 1, 2014, incorporated in rule by reference and found on our Web page at: <http://www.dhs.state.or.us/policy/healthplan/guides/pharmacy/clinical.html>

(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 (see OAR 410-121-0100 for a description of the DUR program). 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 is required for brand name drugs that have two or more generically equivalent products available and that are NOT determined Narrow Therapeutic Index drugs by the Oregon 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 department of patent expiration within 30 days of patent expiration for (5)(a) to apply;

(c) Criteria for approval are:

(A) If criteria established in subsection (3) or (4) of this rule applies, follow that criteria;

(B) If (6)(A) does not apply, the prescribing practitioner must 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 is required 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 409.110, 413.042, 414.065, 414.325, 414.334

Stats. Implemented: ORS 414.065

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

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**Rule Caption:** Adopts OAR 410-136-3010 Regarding the Relationship of Coordinated Care Organizations and Non-Emergent Medical Transportation

**Adm. Order No.:** DMAP 39-2014

**Filed with Sec. of State:** 7-1-2014

**Certified to be Effective:** 7-1-14

**Notice Publication Date:** 6-1-2014

**Rules Adopted:** 410-136-3010

**Subject:** This rule delineates under what circumstance a Coordinated Care Organization is responsible for providing non-emergent medical transportation (NEMT) benefits to an Oregon Health Plan recipient.

**Rules Coordinator:** Sandy Cafourek—(503) 945-6430

## 410-136-3010

### Coordinated Care Organizations

(1) The Authority contracts with Coordinated Care Organizations (CCOs) to provide medical services for individuals receiving Division of Medical Assistance Programs (Division), Title XIX and Title XXI services for the purpose of providing integrated and coordinated care services across physical health, dental health, and non-emergent medical transportation (NEMT). See also OAR chapter 410, division 120 (General Rules) and division 141 (Oregon Health Plan rules) for definitions and responsibilities and OAR 410-120-1210(4) (Division of Medical Assistance Programs and Delivery Systems) for a description of how individuals receive services through CCOs.

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(2) When the Authority provides a CCO with a global budget that includes funds to provide NEMT services for its members, the CCO shall provide NEMT services to its members.

(3) The Authority may not pay for services a CCO covers for its members. Reimbursement is a matter between the CCO and its transportation providers.

(4) For members enrolled in a CCO, all transportation services must be coordinated through the member's CCO or the CCO's designated transportation provider, if any, prior to receiving services.

Stat. Auth.: ORS 413.042 & 414.625  
Stats. Implemented: ORS 414.625  
Hist.: DMAP 39-2014, f. & cert. ef. 7-1-14

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**Rule Caption:** Add Non-Emergent Medical Transportation (NEMT) Language for Integration into Coordinated Care Organization Benefit Package

**Adm. Order No.:** DMAP 40-2014

**Filed with Sec. of State:** 7-1-2014

**Certified to be Effective:** 7-1-14

**Notice Publication Date:** 6-1-2014

**Rules Adopted:** 410-141-3435, 410-141-3440, 410-141-3445, 410-141-3450, 410-141-3455, 410-141-3460, 410-141-3465, 410-141-3470, 410-141-3475, 410-141-3480, 410-141-3485

**Subject:** These rules include, but are not limited to, the requirement to implement the NEMT program within the CCO set of covered services, effective July 1, 2014; the definition of terms related to this program; and designation of who can receive services, under what circumstances, and how. Additional rule parameters include: equipment requirements, insurance requirements, what constitutes out-of-state requirements, rules applicable for children younger than 12 years old, rules relating to young adults with special physical or developmental needs (regardless of age), and secured transport for those in danger of harming themselves or others. Lastly included are ambulance transport when a medical facility or provider states the member's medical condition requires the presence of a health care professional during the emergency or non-emergency transport, modifications based on member circumstance, member rights and confidentiality, reports and documentation, audit requirements, and client reimbursed mileage, meals, and lodging.

**Rules Coordinator:** Sandy Cafourek—(503) 945-6430

## 410-141-3435

### NEMT General Requirements

(1) A Coordinated Care Organization shall provide all NEMT services for its members. The Authority shall provide NEMT services in CCO's service area only to members not enrolled in a CCO.

(2) A CCO shall provide a toll-free call center for members to request rides.

(3) A CCO and its contracted transportation provider may not bill a member for any transport to and from medical services that are covered and where the CCO or its contracted transportation provider denied reimbursement.

(4) CCOs shall require NEMT providers to obtain and maintain insurance at limits no less than is required under OAR 410-136-3060.

(5) Transportation providers shall be considered "participating providers" for the purposes of OAR 410-141-3180 (Record Keeping and Use of Health Information Technology).

Stat. Auth.: ORS 413.042 & 414.625  
Stats. Implemented: ORS 414.625  
Hist.: DMAP 40-2014, f. & cert. ef. 7-1-14

## 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 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

## 410-141-3445

### Out-of-Service-Area and Out-of-State Transportation

(1) A CCO shall provide NEMT services outside the CCO's service area under the following circumstances:

(a) The member is receiving an OHP-covered health care service that is not available in the service area but is available in another area of the state;

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(b) The member is receiving an OHP-covered service where the service location is no more than 75 miles from the Oregon border and contiguous to the CCO's service area;

(c) The CCO determines that no local medical provider or facility as outlined in OAR 410-141-3220 will provide OHP-covered medical services for the member; or,

(d) The member is receiving an OHP-covered service outside of Oregon that is not available in Oregon.

(2) Nothing in this rule prohibits a CCO from providing and paying for NEMT services to allow a client to access other services the CCO authorizes.

Stat. Auth.: ORS 413.042 & 414.625  
Stats. Implemented: ORS 414.625  
Hist.: DMAP 40-2014, f. & cert. ef. 7-1-14

## 410-141-3450

### Attendants for Child and Special Needs Transports

(1) This rule applies to NEMT for children under 12 years of age who are eligible for NEMT services to and from OHP-covered medical services. The rule also applies to children and young adults with special physical or developmental needs regardless of age.

(2) Parents or guardians must provide an attendant to accompany these members while traveling to and from medical appointments except when:

(a) The driver is a Department of Human Services (Department) volunteer or employee or an Authority employee;

(b) The member requires secured transport pursuant to OAR 410-141-3437 (Secured Transports); or

(c) An ambulance provider transports the member for non-emergent services, and the CCO reimburses the ambulance provider at the ambulance transport rate, per CCO contract or non-contracted rate policy.

(3) NEMT ambulance transports shall have an attendant when the CCO uses an ambulance to provide wheelchair or stretcher car or van rides.

(4) The Department shall establish and administer written guidelines for members in the Department's custody including written guidelines for volunteer drivers. If the Department's requirements or administrative rules differ from this rule, the Department's requirements or administrative rules take precedence.

(5) An attendant may be the member's mother, father, stepmother, stepfather, grandparent, or guardian. The attendant may also be any adult the parent or guardian authorizes. An attendant may also be the member's brother, sister, stepbrother, or stepsister if the attendant is at least 18 years of age, and the parent or guardian authorizes it.

(6) CCOs may require the member's parent or guardian to provide written authorization for an attendant other than the parent or guardian to accompany the member.

(7) The CCO may not bill additional charges for a member's attendant.

(8) The attendant must accompany the member from the pick-up location to the destination and the return trip. The attendant must also remain with the member during their appointment.

(9) The member's parent, guardian, or adult caregiver shall provide and install safety seats as required by ORS 811.210-811.225. An NEMT driver may not transport a member if a parent or guardian fails to provide a safety seat that complies with state law.

Stat. Auth.: ORS 413.042 & 414.625  
Stats. Implemented: ORS 414.625  
Hist.: DMAP 40-2014, f. & cert. ef. 7-1-14

## 410-141-3455

### Secured Transports

(1) "Secured transport" means NEMT services for the involuntary transport of members who are in danger of harming themselves or others. Secured transports may be used when:

(a) The CCO verified that the secured transporter has met the requirements of the secured transport protocol pursuant to OAR 309-033-0200 through 309-033-0970, and the secured transporter is able to transport the member who is in crisis or at immediate risk of harming themselves or others due to mental or emotional problems or substance abuse; and

(b) The transport is to a Medicaid enrolled facility that the Authority recognizes as being able to treat the immediate medical or behavioral health care needs of the member in crisis.

(2) One additional attendant may accompany the member at no additional charge when medically appropriate, such as to administer medications in-route or to satisfy legal requirements including, but not limited to, when a parent, legal guardian, or escort is required during transport.

(3) The CCO shall authorize transports to and from OHP covered medical services for an eligible member for court ordered medical services with the following exceptions:

(a) The member is in the custody of or under the legal jurisdiction of any law enforcement agency;

(b) The member is an inmate of a public institution as defined in OAR 461-135-0950 (Eligibility for Inmates); or

(c) The Authority has suspended the member's OHP eligibility pursuant to ORS 411.443 or 411.439.

(4) The CCO shall assume that a member returning to their place of residence is no longer in crisis or at immediate risk of harming themselves or others, and is, therefore, able to use non-secured transportation. In the event that a secured transport is medically appropriate to return a member to their place of residence, the CCO shall obtain written documentation signed by the treating medical professional stating the circumstances that required secured transport. The CCO shall retain the documentation and a copy of the order in their record for the Authority to review.

(5) The CCO may approve and pay for secured medical transport provided to a person going to or from a court hearing or to or from a commitment hearing if there is no other source of funding for this transport.

(6) 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.

Stat. Auth.: ORS 413.042 & 414.625  
Stats. Implemented: ORS 414.625  
Hist.: DMAP 40-2014, f. & cert. ef. 7-1-14

## 410-141-3460

### Ground and Air Ambulance Transports

(1) Transporting a member via ambulance is required when a medical facility or provider states the member's medical condition requires the presence of a health care professional during the emergency or non-emergency transport. This includes neonatal transports.

(2) For NEMT services, the CCOs shall authorize the transport.

(3) CCOs shall provide ambulance transports with a medical technician when:

(a) A member's medical condition requires a stretcher;

(b) The length of transport would require a personal care attendant; and

(c) The member does not have an attendant who can assist with personal care during the ride.

(4) When a member's medical condition is an emergency as defined in OAR 410-120-0000, emergency ambulance transportation must be used. The ambulance must transport the member to the nearest appropriate facility able to meet the member's medical needs.

(5) CCOs shall verify that the Authority has licensed providers of ground or air ambulance services to operate ground or air ambulances. If the ambulance service provider is located in a contiguous state and regularly provides rides to OHP members, the CCO must ensure that both the Authority and the contiguous state have licensed the ambulance service provider.

Stat. Auth.: ORS 413.042 & 414.625  
Stats. Implemented: ORS 414.625  
Hist.: DMAP 40-2014, f. & cert. ef. 7-1-14

## 410-141-3465

### Modifications for Individuals with Disabilities

(1) For the purposes of this rule, "direct threat" means a significant risk to the health or safety of others. A direct threat is one that:

(a) Cannot be eliminated or reduced to an acceptable level through the provision of auxiliary aids and services or through reasonably modifying policies, practices, or processes.

(b) Is identified through an individual assessment that relies on current medical evidence or the best available objective evidence that shows:

(A) The nature, duration, and severity of the risk;

(B) The probability that a potential injury will actually occur; and

(C) Whether reasonable modification of policies, practices, or processes will lower or eliminate the risk.

(2) CCO's may not apply criteria, standards, or practices that screen out or tend to screen out individuals in a protected class from fully and equally enjoying any goods, services, programs, or activities unless:

(a) The criteria can be shown to be necessary for providing those goods and services; or

(b) The CCO determines the screening or exclusion identifies a direct threat to the health and safety of others.

# ADMINISTRATIVE RULES

(3) CCOs and their subcontractors shall comply with the Authority's non-discrimination and modification rules found at OAR 943-005-0000 to 943-005-0070.

(4) CCO members may use the processes and rights specified in OAR 410-141-3260 through 3264 (Grievance System and Contested Case Hearings Rules).

Stat. Auth.: ORS 413.042 & 414.625  
Stats. Implemented: ORS 414.625  
Hist.: DMAP 40-2014, f. & cert. ef. 7-1-14

## 410-141-3470

### Service Modifications

(1) CCOs shall draft policies and procedures describing passenger rights and responsibilities including the right to file a complaint and request reconsideration and provide this information in all general information materials such as handbooks.

(2) CCOs shall draft policies and procedures that ensure the safety of all passengers in NEMT vehicles and provide the information to contractors, subcontractors, and members receiving NEMT services.

(3) A CCO may modify or a member may request modification of NEMT services when the member:

- (a) Threatens harm to the driver or others in the vehicle.
- (b) Has a health condition that creates a health or safety concern to the driver, others in the vehicle, or the member as described in OAR 410-141-3439.

(c) Engages in behaviors or circumstances that place the driver or others in the vehicle at risk of harm.

(d) Engages in behavior that, in the CCO's judgment, causes local medical providers or facilities to refuse to provide further services without modifying NEMT services.

- (e) Frequently does not show up for scheduled rides.
- (f) Frequently cancels the ride on the day of the scheduled ride time.

(4) Reasonable modifications include, but are not limited to, requiring members to:

- (a) Use a specific transportation provider;
- (b) Travel with an attendant;
- (c) Use public transportation where available;
- (d) Drive or locate someone to drive the member and receive mileage reimbursement;
- (e) Confirm the ride with the NEMT provider on the day of or the day before the scheduled ride.

(5) Before modifying services, the NEMT provider, a CCO representative, and the member shall:

- (a) Communicate about the reason for imposing a modification;
- (b) Explore options that are appropriate to the member's needs;
- (c) Address health and safety concerns;
- (d) The CCO or member may include the member's care team in the discussion;

(e) The member may include another individual of their choosing in the discussion.

(6) Responses to requests for modification or auxiliary aids based on disability or other protected class status under state or federal rule or law must comply with the Americans with Disabilities Act and all other applicable state and federal laws and rules.

(7) A CCO may not modify NEMT services under this rule due solely to a request for modification or auxiliary aid based on disability or other protected class status.

(8) A CCO may not modify NEMT services to result in a denial of NEMT services to a member.

(9) A CCO shall make all reasonable efforts to offer an appropriate alternative to meet a member's needs under the circumstances.

Stat. Auth.: ORS 413.042 & 414.625  
Stats. Implemented: ORS 414.625  
Hist.: DMAP 40-2014, f. & cert. ef. 7-1-14

## 410-141-3475

### Contested Case Hearings

As required by 42 CFR 431, the CCO shall comply with OAR 410-141-3264 pertaining to contested case hearings when it denies a ride with the following exceptions:

(1) Prior to mailing a notice of action to a member, the CCO must provide a secondary review by another employee when the initial screener denies a ride.

(2) The CCO shall mail a notice of action to a member denied a ride within 72 hours of denial.

Stat. Auth.: ORS 413.042 & 414.625  
Stats. Implemented: ORS 414.625  
Hist.: DMAP 40-2014, f. & cert. ef. 7-1-14

## 410-141-3480

### Member Reimbursed Mileage, Meals, and Lodging

(1) A CCO may prior authorize a member's mileage, meals, and lodging to covered medical service in order for the member to qualify for reimbursement.

(2) A CCO may disallow a client reimbursement request received more than 45 days after the travel.

(3) A CCO shall reimburse a member for mileage, meals, and lodging at rates not less than the Authority's allowable rates. See the Division's fee schedule, available at: <http://www.oregon.gov/oha/healthplan/pages/feeschedule.aspx>.

(4) The member must return any documentation a CCO requires before receiving reimbursement.

(5) A CCO may hold reimbursements under the amount of \$10 until the member's reimbursement reaches \$10.

(6) A CCO shall reimburse members for meals when a member travels:

- (a) Out of their local area as outlined in OAR 410-141-3220(4)(a) and (b); and
- (b) For a minimum of four hours round-trip.

(7) A CCO's brokerage or other transportation subcontractor shall reimburse members for lodging when:

- (a) A member would otherwise be required to begin travel before 9 a.m. in order to reach a scheduled appointment;
  - (b) Travel from a scheduled appointment would end after 9 p.m.; or
  - (c) The member's health care provider documents a medical need.
- (8) A CCO may reimburse members for lodging under additional circumstances at the CCO's discretion.

(9) A CCO shall reimburse for meals or lodging for one attendant, which may be a parent, to accompany the member if medically necessary, if:

- (a) The member is a minor child and unable to travel without an attendant;
- (b) The member's attending physician provides a signed statement indicating the reason an attendant must travel with the member;
- (c) The member is mentally or physically unable to reach his or her medical appointment without assistance; or
- (d) The member is or would be unable to return home without assistance after the treatment or service.

(10) A CCO may reimburse members for meals or lodging for additional attendants or under additional circumstances at the CCO's discretion.

(11) A CCO may recover overpayments made to a member. Overpayments occur when a CCO's brokerage or other transportation subcontractor paid the member:

- (a) For mileage, meals, and lodging, and another resource also paid:
- (A) The member; or
- (B) The ride, meal, or lodging provider directly;
- (b) Directly to travel to medical appointments, and the member did not use the money for that purpose, did not attend the appointment, or shared the ride with another member whom the brokerage also paid directly;

(c) For common carrier or public transportation tickets or passes, and the member sold or otherwise transferred the tickets or passes to another individual.

(12) If an individual or entity other than the member or the minor member's parent or guardian provides the ride, a CCO's brokerage or other transportation subcontractor may reimburse the individual or entity that provided the ride.

Stat. Auth.: ORS 413.042 & 414.625  
Stats. Implemented: ORS 414.625  
Hist.: DMAP 40-2014, f. & cert. ef. 7-1-14

## 410-141-3485

### Reports and Documentation

(1) CCOs shall maintain documentation of rides denied and rides provided to members.

(2) For NEMT services provided to members, this documentation shall include:

- (a) All encounter data required in the current CCO contract;
- (b) Names of the company and driver transporting the member.

(3) For NEMT services denied to members, this documentation shall include:

- (a) The name of the member and the individual requesting the ride on behalf of the member, if applicable;
- (b) The member's OHP medical care identification number;
- (c) The date and time of the request for transportation;

# ADMINISTRATIVE RULES

- (d) The name of the employee who denied a ride;
- (e) The name of the employee who performed the secondary review before denying the ride;
- (f) The reason for the denial and the applicable OAR supporting the denial;
- (g) The date on the notice of action the brokerage mailed to the member;
- (h) Documentation on the review, resolution, or disposition of the matter, if applicable, including the reason for the decision and the date of the resolution or disposition; and
  - (i) Notations of oral and written communications with the member.
- (4) The CCO shall retain the documentation on NEMT service denials for three calendar years, even if the CCO, its brokerage, or subcontractor that denied the service 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) The Authority may request and the CCO shall provide other reports or information not specified in sections (1-4) of this rule.

Stat. Auth.: ORS 413.042 & 414.625  
Stats. Implemented: ORS 414.625  
Hist.: DMAP 40-2014, f. & cert. ef. 7-1-14

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**Rule Caption:** Align with Department of Human Services OAR Chapter 461 Rules

**Adm. Order No.:** DMAP 41-2014

**Filed with Sec. of State:** 7-1-2014

**Certified to be Effective:** 7-1-14

**Notice Publication Date:** 3-1-2014

**Rules Amended:** 410-120-0006

**Subject:** In coordination with the Department of Human Services' (Department) revision of rules established in OAR chapter 461 for all overpayment, personal injury liens and estate administration the Division is amending 410-120-0006 to assure that the Division's rule aligns with and reflects information found in the Department's amended rules. In 410-120-0006, the Division adopts and incorporates Department rules and must update 410-120-0006 accordingly. The Division is amending this rule which incorporates rules established in OAR chapter 461, for all overpayment, personal injury liens and estate administration for Authority programs covered under OAR 410-200. References to OAR chapter 461 in contracts of the Authority are deemed to be references to the requirements of this rule.

**Rules Coordinator:** Sandy Cafourek—(503) 945-6430

## 410-120-0006

### Medical Eligibility Standards

As the state Medicaid and CHIP agency, the Oregon Health Authority (Authority) is responsible for establishing and implementing eligibility policies and procedures consistent with applicable law. As outlined in OAR 943-001-0020, the Authority and the Department of Human Services (Department) work together to adopt rules to assure that medical assistance eligibility procedures and determinations are consistent across both agencies.

(1) The Authority adopts and incorporates by reference the rules established in OAR chapter 461 for all overpayment, personal injury liens and estates administration for Authority programs covered under OAR chapter 410, division 200.

(2) Any reference to OAR chapter 461 in contracts of the Authority are deemed to be references to the requirements of this rule and shall be construed to apply to all eligibility policies, procedures and determinations by or through the Authority.

(3) For purposes of this rule, references in OAR chapter 461 to the Department or to the Authority shall be construed to be references to both agencies.

Stat. Auth.: ORS 413.042  
Stats. Implemented: ORS 413.042 & 414.065  
Hist.: DMAP 10-2011, f. 6-29-11, cert. ef. 7-1-11; DMAP 18-2011(Temp), f. & cert. ef. 7-15-11 thru 1-11-12; DMAP 21-2011(Temp), f. 7-29-11, cert. ef. 8-1-11 thru 1-11-12; DMAP 25-2011(Temp), f. 9-28-11, cert. ef. 10-1-11 thru 1-11-12; DMAP 36-2011, f. 12-13-11, cert. ef. 1-1-12; DMAP 1-2012(Temp), f. & cert. ef. 1-13-12 thru 7-10-12; DMAP 2-2012(Temp), f. & cert. ef. 1-26-12 thru 7-10-12; DMAP 3-2012(Temp), f. & cert. ef. 1-31-12 thru 2-1-12; DMAP 4-2012(Temp), f. 1-31-12, cert. ef. 2-1-12 thru 7-10-12; DMAP 9-2012(Temp), f. & cert. ef. 3-1-12 thru 7-10-12; DMAP 21-2012(Temp), f. 3-30-12, cert. ef. 4-1-12 thru 7-10-12; DMAP 25-2012(Temp), f. & cert. ef. 5-1-12 thru 7-10-12; Administrative correction 8-1-12; DMAP 35-2012(Temp), f. & cert. ef. 7-20-12 thru 1-15-13; DMAP 45-2012(Temp), f. & cert. ef. 10-5-12 thru 1-19-13; DMAP 50-2012, f. 10-31-12, cert. ef. 11-1-12; DMAP 53-2012(Temp), f. & cert. ef. 11-1-12 thru 4-29-13; DMAP 56-2012(Temp), f. 11-30-12, cert. ef. 12-1-12 thru 4-1-13; DMAP 60-2012, f. 12-27-12, cert. ef. 1-1-13; DMAP 65-2012(Temp),

f. 12-28-12, cert. ef. 1-1-13 thru 6-29-13; DMAP 2-2013(Temp), f. & cert. ef. 1-8-13 thru 6-29-13; DMAP 3-2013(Temp), f. & cert. ef. 1-30-13 thru 6-29-13; DMAP 5-2013(Temp), f. & cert. ef. 2-20-13 thru 6-29-13; DMAP 7-2013(Temp), f. & cert. ef. 3-1-13 thru 6-29-13; DMAP 12-2013, f. 3-27-13, cert. ef. 4-1-13; DMAP 17-2013, f. & cert. ef. 4-10-13; DMAP 24-2013, f. & cert. ef. 5-29-13; DMAP 32-2013, f. & cert. ef. 6-27-13; DMAP 39-2013(Temp), f. 7-26-13, cert. ef. 8-1-13 thru 1-28-14; DMAP 44-2013(Temp), f. 8-21-13, cert. ef. 8-23-13 thru 1-28-14; DMAP 51-2013, f. & cert. ef. 10-1-13; DMAP 52-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 55-2013(Temp), f. & cert. ef. 10-2-13 thru 3-31-14; DMAP 59-2013(Temp), f. 10-31-13, cert. ef. 11-1-13 thru 3-31-14; DMAP 9-2014(Temp), f. 1-31-14, cert. ef. 2-1-14 thru 3-31-14; DMAP 18-2014, f. 3-28-14, cert. ef. 3-31-14; DMAP 41-2014, f. & cert. ef. 7-1-14

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**Rule Caption:** Including Additional Form Number as a Temporary Medicaid ID

**Adm. Order No.:** DMAP 42-2014

**Filed with Sec. of State:** 7-3-2014

**Certified to be Effective:** 7-3-14

**Notice Publication Date:** 6-1-2014

**Rules Amended:** 410-120-1140

**Subject:** The Affordable Care Act set forth a series of changes for Medicaid and CHIP eligibility including allowing hospitals to make presumptive eligibility determinations (Section 2202). This rule is amended in order to incorporate the hospital approval form as a temporary ID that guarantees eligibility for benefits.

**Rules Coordinator:** Sandy Cafourek—(503) 945-6430

## 410-120-1140

### Verification of Eligibility and Coverage

(1) To ensure Division reimbursement of services, providers are responsible to verify the following before rendering services:

(a) Client eligibility: That the person is an eligible Oregon Health Plan (OHP) client on the date(s) services are rendered; and

(b) Benefit coverage: That the person is enrolled in an OHP benefit package that covers the services they plan to render. See OAR 410-120-1210 for services covered under each Division benefit package.

(2) Providers who do not verify eligibility and benefit coverage with the Division before serving a person shall assume full financial responsibility in serving that person.

(3) The following types of client identification (ID) only list the client's name, Oregon Medicaid ID number (prime number), and the date the ID was issued. They do not guarantee client eligibility or benefit coverage:

(a) The standard ID (called the Oregon Health ID, formerly the DHS Medical Care ID) printed on perforated paper the size of a business card;

(b) Replacement IDs (printed on regular printer paper in case of misplaced originals).

(4) When a person presents a standard or replacement ID, providers must verify client eligibility and benefit coverage through one of the following (For instructions see the Division General Rules Supplemental Information available on the web at [www.dhs.state.or.us/policy/health-plan/guides/genrules/genrules-supp0912.pdf](http://www.dhs.state.or.us/policy/health-plan/guides/genrules/genrules-supp0912.pdf)):

(a) The Division's Medicaid Management Information System (MMIS) Provider Web portal;

(b) The Automated Voice Response (AVR) telephone system;

(c) Batch or real-time electronic data interchange (EDI) eligibility inquiry (270) and response (271) transactions;

(5) The client may also present one of the following Temporary Oregon Health IDs; both are full-page forms:

(a) DMAP form 1086: This document guarantees eligibility and benefit coverage for seven days from the beginning dates of coverage entered in Part 1 of the form. This temporary ID is issued only if the client needs immediate care but their eligibility and coverage information is not yet available for verification as described in part (4) of this rule. Providers must honor the Temporary Oregon Health ID when presented within seven (7) days of the beginning date of coverage entered on the form;

(b) OHP 3263A: Approval Notice for Hospital Presumptive Eligibility for Medical Coverage: This ID is issued for those who are "presumed" eligible based on certain information and authorizes benefit coverage only on a temporary basis. The OHP 3263A informs the client of the exact date by which the Division must receive their full Medicaid application so that they may be evaluated for ongoing eligibility.

Stat. Auth.: ORS 413.042  
Stats. Implemented: ORS 414.065, 414.025 & 414.047  
Hist.: PWC 683, f. 7-19-74, ef. 8-11-74; PWC 803(Temp), f. & ef. 7-1-76; PWC 812, f. & ef. 10-1-76; AFS 14-1979, f. 6-29-79, ef. 7-1-79; 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 103-1982, f. & ef. 11-1-83;

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AFS 61-1983, f. 12-19-83, ef. 1-1-84; AFS 24-1985, f. 4-24-85, ef. 6-1-85; AFS 43-1986(Temp), f. 6-13-86, ef. 7-1-86; AFS 57-1986, f. 7-25-86, ef. 8-1-86; AFS 78-1986(Temp), f. 12-16-86, ef. 1-1-87; AFS 10-1987, f. 2-27-87, ef. 3-1-87; AFS 53-1987, f. 10-29-87, ef. 11-1-87; AFS 53-1988(Temp), f. 8-23-88, cert. ef. 9-1-88; HR 2-1990, f. 2-12-90, cert. ef. 3-1-90, Renumbered from 461-013-0040; Renumbered from 461-013-0103 & 461-013-0109; HR 25-1991(Temp), f. & cert. ef. 7-1-91; HR 41-1991, f. & cert. ef. 10-1-91; HR 22-1993(Temp), f. & cert. ef. 9-1-93; HR 32-1993, f. & cert. ef. 11-1-93; OMAP 10-1999, f. & cert. ef. 4-1-99, Renumbered from 410-120-0080; OMAP 35-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 67-2004, f. 9-14-04, cert. ef. 10-1-04; OMAP 39-2005, f. 9-2-05, cert. ef. 10-1-05; DMAP 34-2008, f. 11-26-08, cert. ef. 12-1-08; DMAP 49-2012, f. 10-31-12, cert. ef. 11-1-12; DMAP 42-2014, f. & cert. ef. 7-3-14

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**Rule Caption:** Revision to Fee-for-Service Medicaid rule; Additional Services Will Require Prior Authorization

**Adm. Order No.:** DMAP 43-2014

**Filed with Sec. of State:** 7-8-2014

**Certified to be Effective:** 7-8-14

**Notice Publication Date:** 6-1-2014

**Rules Amended:** 410-130-0200

**Subject:** This rule lists medical services by billing code for which the Division requires prior authorization (PA). It applies to Medicaid clients who are fee-for-service, i.e., not enrolled in a CCO. It includes a link to the required forms and directions. This revision adds language to specify when providers must obtain PA and outlines the criteria the Division uses to make authorization decisions. Additionally, this revision adds PA requirement to new groups of billing codes for tonsillectomy, cholecystectomy, and ear tubes, and it adds codes to several existing groups, such as bariatric surgery that already require PA.

**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. For details on where to obtain PA, download a copy of the Medical-Surgical Services Supplemental Information booklet at: <http://www.dhs.state.or.us/policy/healthplan/guides/medsur/med-surgsupp0912.pdf>

(2) For clients enrolled in a prepaid health plan (PHP), providers must obtain PA from the client's PHP.

(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 that term is defined in OAR 410-120-0000.

(5) For bariatric surgery, PA is required from both of the following:

(a) The primary care provider prior to referral to a bariatric surgery center, and

(b) The bariatric surgery center prior to surgery.

(6) For clients with both Medicare and Medicaid coverage PA is not required in most instances. PA may be required when a service is covered by Medicaid but not by Medicare and PA is required for the following regardless of Medicare coverage:

(a) Bariatric surgery evaluations,

(b) Bariatric surgeries,

(c) And most transplants;

(7) PA is not required:

(a) For kidney and cornea transplants unless they are performed out-of-state;

(b) For emergent or urgent procedures or services;

(c) For hospital admissions unless the procedure requires PA.

(8) The Division may request a second opinion before PA is given for a surgery.

(9) Treating and performing practitioners are responsible for obtaining PA.

(10) Refer to Table 130-0200-1 for all services and procedures requiring PA.

(11) **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

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**Rule Caption:** Rebasement Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) Reimbursement Levels

**Adm. Order No.:** DMAP 44-2014

**Filed with Sec. of State:** 7-11-2014

**Certified to be Effective:** 7-11-14

**Notice Publication Date:** 5-1-2014

**Rules Amended:** 410-122-0186

**Rules Repealed:** 410-122-0186(T)

**Subject:** The Division has temporarily amended OAR 410-122-0186 to allow a change in payment methodology based on a percentage of a more current version of Medicare fee schedule (2012). Payments were calculated as a percentage of 2010 Medicare fee schedule and vary depending on category of service. The new percentages keep rates essentially the same to maintain budget neutrality.

**Rules Coordinator:** Sandy Cafourek—(503) 945-6430

## 410-122-0186

### Payment Methodology

(1) The Division of Medical Assistance Programs (Division) utilizes a payment methodology for covered durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) that is generally based on the 2012 Medicare fee schedule.

(a) The Division fee schedule amount is 82.6 percent of the 2012 Medicare Fee Schedule for items covered by Medicare and the Division except for:

(A) Ostomy supplies fee schedule amounts are 93.3 percent of the 2012 Medicare Fee Schedule (See Table 122-0186-1 for list of codes subject to this pricing); and

(B) Prosthetic and Orthotic fee schedule amounts (L-codes) are 82.6 percent of the 2012 Medicare Fee Schedule; and

(C) Complex rehabilitation items and services, other than power wheelchairs, fee schedule amounts are 88 percent of the 2012 Medicare Fee Schedule (See Table 122-0186-2 for a list of codes subject to this pricing); and

(D) Group 1 power wheelchairs (K0813-K0816) and Group 2 power wheelchairs with no added power option (K0820-K0829) fee schedule amounts are 55 percent of the 2012 Medicare Fee Schedule; and

(E) Group 3 power wheelchairs (K0835-K0864) fee schedule amounts are 58.7 percent of the 2012 Medicare Fee Schedule;

(b) For items that are not covered by Medicare but covered by the Division, the fee schedule amount shall be 99 percent of DMAP's published rate effective July 31, 2011.

(c) For new codes added by the Center for Medicare and Medicaid Services (CMS), payment shall be based on the most current Medicare fee schedule and shall follow the same payment methodology as stated in (1)(a)(A-E). New codes that do not appear on the current Medicare fee schedule shall be manually priced as indicated in (4)(a-c) of this rule.

(2) Payment is calculated using the lesser of the following:

(a) The Division fee schedule amount using the above methodology in (1)(a) and (b); or

(b) The manufacturer's suggested retail price (MSRP); or

(c) The actual charge submitted.

(3) The Division reimburses for the lowest level of service that meets medical appropriateness. See OAR 410-120-1280 Billing and 410-120-1340 Payment.

(4) The Division shall reimburse miscellaneous codes E1399 (durable medical equipment, miscellaneous) and K0108 (wheelchair component or accessory, not otherwise specified), and any code that requires manual pricing using the lesser of the following:

# ADMINISTRATIVE RULES

(a) Seventy-five percent (75) of Manufacturer's Suggested Retail Price (MSRP) verifiable with quote, invoice, or bill from the manufacturer that clearly states the amount indicated is MSRP; or

(b) If MSRP is not available then reimbursement shall be acquisition cost plus 20 percent, verifiable with quote, invoice, or bill from the manufacturer that clearly states the amount indicated is acquisition cost; or

(c) Actual charge submitted by the provider.

(5) Reimbursement on miscellaneous codes E1399 and K0108 shall be capped at \$3,200.

(6) Prior authorization (PA) is required for miscellaneous codes E1399, K0108, and A4649 (surgical supply; miscellaneous) when the cost is greater than \$150, and the DMEPOS provider shall submit the following documentation:

(a) A copy of the items from (4)(a) and (b) that will be used to bill; and,

(b) Name of the manufacturer, description of the item, including product name and model name and number, serial number when applicable, and technical specifications;

(c) A picture of the item upon request by the Division.

(7) The DMEPOS provider shall submit verification for items billed with miscellaneous codes A4649, E1399, and K0108 when no specific Healthcare Common Procedure Coding System (HCPCS) code is available. Providers are allowed to submit verification from an organization such as the Medicare Pricing, Data Analysis and Coding (PDAC) contractor.

(8) The Division may review items that exceed the maximum allowable or cap on a case-by-case basis and may request the provider submit the following documentation for reimbursement:

(a) Documentation which supports that the client meets all of the coverage criteria for the less costly alternative; and,

(b) A comprehensive evaluation by a licensed clinician (who is not an employee of or otherwise paid by a provider) that clearly explains why the less costly alternative is not sufficient to meet the client's medical needs, and;

(c) The expected hours of usage per day, and;

(d) The expected outcome or change in the client's condition.

(9) For codes A4649, E1399, and K0108 when the cost is \$150 or less per each unit:

(a) Only items that have received an official product review coding decision from an organization such as PDAC with codes A4649, E1399, or K0108 shall be billed to the Division. These products may be listed in the PDAC Durable Medical Equipment Coding System Guide (DMECS) DMEPOS Product Classification Lists;

(b) Subject to service limitations of the Division's rules;

(c) PA is not required;

(d) The amount billed to the Division shall not exceed 75 percent of Manufacturer's Suggested Retail Price (MSRP). The provider is required to retain documentation of the quote, invoice, or bill to allow the Division to verify through audit procedures.

(10) For rented equipment, the equipment is considered paid for and owned by the client when the Division fee schedule allowable is met or the actual charge from the provider is met, whichever is lowest. The provider shall transfer title of the equipment to the client.

(11) **Table 122-1086-1:** Ostomy Codes, **Table 122-0186-2:** Complex Rehabilitation Codes

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 413.042 & 414.065

Stats. Implemented: ORS 414.065

Hist.: OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 44-2005, f. 9-9-05, cert. ef. 10-1-05; OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 12-2007, f. 6-29-07, cert. ef. 7-1-07; DMAP 17-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 15-2009 f. 6-12-09, cert. ef. 7-1-09; DMAP 22-2011(Temp), f. 7-29-11, cert. ef. 8-1-11 thru 1-25-12; DMAP 42-2011, f. 12-21-11, cert. ef. 1-1-12; DMAP 31-2012(Temp), f. 6-29-12, cert. ef. 7-1-12 thru 12-27-12; DMAP 57-2012, f. & cert. ef. 12-27-12; DMAP 2-2014(Temp), f. 1-15-14, cert. ef. 2-1-14 thru 7-31-14; DMAP 44-2014, f. & cert. ef. 7-11-14

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**Rule Caption:** Amendment to Program Updates: Marketing, Benefits, Assessment Plan, Measures and Enrollment

**Adm. Order No.:** DMAP 45-2014

**Filed with Sec. of State:** 7-15-2014

**Certified to be Effective:** 8-1-14

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**Rules Amended:** 410-141-0000, 410-141-0050, 410-141-0120, 410-141-0180, 410-141-0270, 410-141-0410, 410-141-0420, 410-141-0480, 410-141-0740, 410-141-3010, 410-141-3015, 410-141-3050, 410-141-3120, 410-141-3145, 410-141-3200, 410-141-3270

**Subject:** The OHP program administrative rules govern the Division of Medical Assistance Programs' payments for services provided to clients. The Division needs to permanently amend these rules to incorporate program updates, federal and state regulations, and housekeeping changes.

**Rules Coordinator:** Sandy Cafourek—(503) 945-6430

## 410-141-0000

### Definitions

In addition to the definitions in OAR 410-120-0000, the following definitions apply:

(1) "Action" means in the case of a Prepaid Health Plan (PHP) or Coordinated Care Organization (CCO):

(a) The denial or limited authorization of a requested service including the type or level of service;

(b) The reduction, suspension, or termination of a previously authorized service;

(c) The denial in whole or in part of payment for a service;

(d) The failure to provide services in a timely manner as defined by the Division of Medical Assistance Programs (Division);

(e) The failure of a PHP or CCO to act within the timeframes provided in 42 CFR 438.408(b); or

(f) For a member who resides in a rural service area where the PHP or CCO is the only PHP or CCO, the denial of a request to obtain covered services outside of the PHP or CCO provider network under any of the following circumstances:

(A) From any other provider (in terms of training, experience, and specialization) not available within the network;

(B) From a provider not part of the network that is the main source of a service to the member as long as the provider is given the same opportunity to become a participating provider as other similar providers. If the provider does not choose to join the network or does not meet the qualifications, the member is given a choice of participating providers and is transitioned to a participating provider within 60 days.

(C) Because the only plan or provider available does not provide the service due to moral or religious objections;

(D) Because the member's provider determines the member needs related services that would subject the member to unnecessary risk if received separately, and not all related services are available within the network; or

(E) The Authority determines that other circumstances warrant out-of-network treatment for moral or religious objections.

(2) "Adjudication" means the act of a court or entity in authority when issuing an order, judgment, or decree; as in a final CCO or MCO claims decision or OHA issuing a final hearings decision. This function is non-delegable under the Coordinated Care contracts in the context of hearings and appeals.

(3) "Appeal" means a request for review of an action.

(4) "Behavioral Health" means mental health conditions as well as substance use disorders.

(5) "Behavioral Health Evaluation" means a psychiatric or psychological assessment used to determine the need for mental health or substance use disorder services.

(6) "Capitated Services" mean those covered services that a PHP or Primary Care Manager (PCM) agrees to provide for a capitation payment under contract with the Authority.

(7) "Capitation Payment" means:

(a) Monthly prepayment to a PHP for health services the PHP provides to members;

(b) Monthly prepayment to a PCM to provide primary care management services for a member enrolled with the PCM.

(8) "CCO Payment" means the monthly payment to a CCO for services the CCO provides to members in accordance with the global budget.

(9) "Certificate of Authority" means the certificate issued by DCBS to a licensed health entity granting authority to transact insurance as a health insurance company or health care service contractor.

(10) "Certified or Qualified Health Care Interpreter" means a trained person who is readily able to communicate with a person with limited English proficiency and to accurately translate the written or oral statements of the person with limited English proficiency into spoken English and readily able to translate the written or oral statement of other persons into the spoken language of the person with limited English proficiency. A certified Health Care Interpreter has met Oregon training standards for certification, has received certification from a national certification body, and is listed in the Oregon Health Care Interpreter Registry; a qualified Health

## ADMINISTRATIVE RULES

Care Interpreter has met Oregon training standards for qualification and has demonstrated language proficiency in English and a second language where certification is not possible using a standardized, nationally recognized language proficiency assessment and is listed in the Oregon Health Care Interpreter Registry.

(11) "Certified Traditional Health Worker" means an individual who has successfully completed a training program or doula training as required by OAR 410-180-0305.

(12) "Cold Call Marketing" means a PCP's or CCO's unsolicited personal contact with a potential member for the purpose of marketing.

(13) "Co-morbid Condition" means a medical condition or diagnosis coexisting with one or more other current and existing conditions or diagnoses in the same patient.

(14) "Community Advisory Council" means the CCO-convened council that meets regularly to ensure the CCO is addressing the health care needs of CCO members and the community consistent with ORS 414.625.

(15) "Community Health Worker" means an individual who:

(a) Has expertise or experience in public health;

(b) Works in an urban or rural community either for pay or as a volunteer in association with a local health care system;

(c) To the extent practicable, shares ethnicity, language, socioeconomic status, and life experiences with the residents of the community where the worker serves;

(d) Assists members of the community to improve their health and increases the capacity of the community to meet the health care needs of its residents and achieve wellness;

(e) Advocates for the individual patient and community health needs, building individual and community capacity to advocate for their health;

(f) Provides health education and information that is culturally appropriate to the individuals being served;

(g) Assists community residents in receiving the care they need;

(h) May give peer counseling and guidance on health behaviors; and

(i) May provide direct services such as first aid or blood pressure screening.

(16) "Community Mental Health Program (CMHP)" means the organization of all services for individuals with mental or emotional disorders operated by, or contractually affiliated with, a local Mental Health Authority operated in a specific geographic area of the state under an inter-governmental agreement or direct contract with the Authority's Addictions and Mental Health Division (AMH).

(17) "Community Standard" means typical expectations for access to the health care delivery system in the member's community of residence. Except where the community standard is less than sufficient to ensure quality of care, the Division requires that the health care delivery system available to Division members in PHPs and to PCM members take into consideration the community standard and be adequate to meet the needs of the Division and PCM members.

(18) "Condition/Treatment Pair" means diagnoses described in the International Classification of Diseases Clinical Modifications, 9th edition (ICD-9-CM), the Diagnostic and Statistical Manual of Mental Disorders, 4th edition (DSM-IV), and treatments described in the Current Procedural Terminology, 4th edition (CPT-4) or American Dental Association Codes (CDT-2), or the Authority AMH Medicaid Procedure Codes and Reimbursement Rates, that, when paired by the Health Evidence Review Commission, constitute the line items in the Prioritized List of Health Services. Condition/treatment pairs may contain many diagnoses and treatments.

(19) "Contract" means an agreement between the State of Oregon acting by and through the Authority and a PHP or CCO to provide health services to eligible members.

(20) "Converting MCO" means a CCO that:

(a) Is the legal entity that contracted as an MCO with the Authority as of July 1, 2011, or;

(b) Was formed by one or more MCOs that contracted with the Authority as of July 1, 2011.

(21) "Coordinated Care Organization (CCO)" means a corporation, governmental agency, public corporation, or other legal entity that is certified as meeting the criteria adopted by the Oregon Health Authority under ORS 414.625 to be accountable for care management and to provide integrated and coordinated health care for each of the organization's members.

(22) "Coordinated Care Services" mean a CCO's fully integrated physical health, behavioral health services pursuant to ORS 414.725, and dental health services pursuant to ORS 414.625(3) that a CCO agrees to provide under contract with the Authority.

(23) "Corrective Action or Corrective Action Plan" means a Division-initiated request for a contractor or a contractor-initiated request for a sub-contractor to develop and implement a time specific plan for the correction of identified areas of noncompliance.

(24) "Covered Services" mean medically appropriate health services described in ORS Chapter 414 and applicable administrative rules that the legislature funds based on the Prioritized List of Health Services.

(25) "Declaration for Mental Health Treatment" means a written statement of an individual's decisions concerning his or her mental health treatment. The individual makes the declaration when they are able to understand and make decisions related to treatment which is honored when the individual is unable to make such decisions.

(26) "Dental Care Organization (DCO)" means a PHP that provides and coordinates dental services as capitated services under OHP.

(27) "Dental Case Management Services" mean services provided to ensure member receives dental services including a comprehensive, ongoing assessment of the member's dental and medical needs related to dental care and the development and implementation of a plan to ensure the member receives those services.

(28) "DCBS Reporting CCO" means for the purpose of OAR 410-141-3340 through 410-141-3395 a CCO that reports its solvency plan and financial status to DCBS, not a CCO holding a certificate of authority.

(29) "Department of Consumer and Business Services (DCBS)" means Oregon's business regulatory and consumer protection agency.

(30) "Diagnostic Services" mean those services required to diagnose a condition, including but not limited to: radiology, ultrasound, other diagnostic imaging, electrocardiograms, laboratory and pathology examinations, and physician or other professional diagnostic or evaluative services.

(31) "Disenrollment" means the act of removing a member from enrollment with a PHP, PCM, or CCO.

(32) "Enrollment" means the assignment of a member to a PHP, PCM, or CCO for management and receipt of health services.

(33) "Free-Standing Mental Health Organization (MHO)" means the single MHO in each county that provides only behavioral services and is not affiliated with a fully capitated health plan for that service area.

(34) "Fully-Capitated Health Plan (FCHP)" means PHPs that contract with the Authority to provide capitated health services including inpatient hospitalization.

(35) "Global Budget" means the total amount of payment as established by the Authority to a CCO to deliver and manage health services for its members including providing access to and ensuring the quality of those services.

(36) "Grievance" means a member's complaint to a PHP, CCO, or to a participating provider about any matter other than an action.

(37) "Grievance System" means the overall system that includes:

(a) Grievances to a PHP or CCO on matters other than actions;

(b) Appeals to a PHP or CCO on actions; and

(c) Contested case hearings through the state on actions and other matters for which the member is given the right to a hearing by rule or state statute.

(38) "Health Services" means:

(a) For purposes of CCOs, the integrated services authorized to be provided within the medical assistance program as defined in ORS 414.025 for the physical medical, behavioral health that includes mental health and substance use disorders, and dental services funded by the Legislative Assembly based upon the Prioritized List of Health Services;

(b) For all other purposes, the services authorized to be provided within the medical assistance program as defined in ORS 414.025 for the physical medical, behavioral health, and dental services funded by the Legislative Assembly based upon the Prioritized List of Health Services.

(39) "Health System Transformation (HST)" means the transformation of health care delivery in medical assistance programs as prescribed by 2011 House Bill 3650, Chapter 602, Oregon Laws 2011 and 2012 Enrolled Senate Bill 1580, Chapter 8, Oregon Laws 2012; and including the CCO Implementation Proposal from the Oregon Health Policy Board (January 24, 2012) approved by Section 2 of 2012 Enrolled Senate Bill 1580.

(40) "Holistic Care" means incorporating the care of the entire member in all aspects of well-being including physical, psychological, cultural, linguistic, and social and economic needs of the member. Holistic care utilizes a process whereby providers work with members to guide their care and identify needs. This also involves identifying with principles of holism in a system of therapeutics, especially one considered outside the mainstream of scientific medicine as naturopathy or chiropractic and often involving nutritional measures.

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(41) “Intensive Case Management (ICM)” means a specialized case management service provided by fully capitated health plans to members identified as aged, blind, or disabled who have complex medical needs including:

- (a) Early identification of members eligible for ICM services;
- (b) Assistance to ensure timely access to providers and capitated services;

(c) Coordination with providers to ensure consideration is given to unique needs in treatment planning;

(d) Assistance to providers with coordination of capitated services and discharge planning; and

(e) Aid with coordinating necessary and appropriate linkage of community support and social service systems with medical care systems.

(42) “Licensed Health Entity” means a CCO that has a Certificate of Authority issued by DCBS as a health insurance company or health care service contractor.

(43) “Line Items” mean condition/treatment pairs or categories of services included at specific lines in the Prioritized List of Health Services.

(44) “Marketing” means any communication from a PHP or a CCO to a potential member who is not enrolled in the PHP or CCO, and the communication can reasonably be interpreted as intended to compel or entice the potential member to enroll in that particular CCO.

(45) “Medical Case Management Services” means services provided to ensure members obtain health services necessary to maintain physical and emotional development and health.

(46) “Mental Health Assessment” means a qualified mental health professional’s determination of a member’s need for mental health services.

(47) “Mental Health Case Management” means services provided to members who need assistance to ensure access to mental health benefits and services from local, regional, or state allied agencies or other service providers.

(48) “Mental Health Organization (MHO)” means a PHP that provides capitated behavioral services for clients.

(49) “National Association of Insurance Commissioners (NAIC)” means the U.S. standard-setting and regulatory support organization created and governed by the chief insurance regulators from the 50 states, the District of Columbia, and five U.S. territories.

(50) “Net Premium” means the premium, net of reinsurance premiums paid, HRA and GME payments, and MCO tax expenses.

(51) “Non-Participating Provider” means a provider that does not have a contractual relationship with a PHP or CCO and is not on their panel of providers.

(52) “OHA or Authority Reporting CCO” means a CCO that reports its solvency plan and financial status to the Authority under these rules.

(53) “Other Non-Medical Services,” also referred to as flexible services, means health-related, non-state plan services intended to improve care delivery and member health. Flexible services are health related and cost-effective alternatives to more technical services. Flexible services are unable to be reported in the conventional manner using CPT or HCPCS codes and may effectively treat or prevent the physical or mental healthcare condition documented in the member’s health or clinical record. The Authority has revised the reporting framework so that CCOs also report qualified flexible services to the Authority in a grouping called “health related services” to be accounted for in the CCO’s medical or member service expenses. These expenditures are not counted as administrative costs when determining the medical loss ratio. Flexible services may include, but are not limited to:

(a) Training and education for health improvement or management (e.g., classes on healthy meal preparation, diabetes self-management curriculum);

(b) Self-help or support group activities (e.g., post-partum depression programs, Weight Watchers groups);

(c) Care coordination, navigation, or case management activities (not covered under state plan benefits, e.g., high utilizer intervention program);

(d) Home and living environment items or improvements (non-DME items to improve mobility, access, hygiene, or other improvements to address a particular health condition, e.g., air conditioner, athletic shoes, or other special clothing);

(e) Transportation not covered under State Plan benefits (e.g., other than transportation to a medical appointment);

(f) Programs to improve the general community health (e.g., farmers’ market in the “food desert”);

(g) Housing supports related to social determinates of health (e.g., shelter, utilities, or critical repairs);

(h) Assistance with food or social resources (e.g., supplemental food, referral to job training or social services);

(i) Other (describe).

(54) “Participating Provider” means a provider that has a contractual relationship with a PHP or CCO and is on their panel of providers.

(55) “PCM Member” means a client enrolled with a primary case manager.

(56) “Peer Wellness Specialist” means an individual who assists behavioral health services consumers to reduce stigmas and discrimination and to provide direct services to assist individuals to create and maintain recovery, health, and wellness by:

(a) Assessing the individual’s behavioral health service and support needs through community outreach;

(b) Assisting individuals with access to available services and resources; and

(c) Addressing barriers to services and providing education and information about available resources and behavioral health issues.

(57) “Person Centered Care” means care that reflects the individual patient’s strengths and preferences; reflects the clinical needs of the patient as identified through an individualized assessment; is based upon the patient’s goals; and will assist the patient in achieving the goals.

(58) “Personal Health Navigator” means an individual who provides information, assistance, tools, and support to enable a patient to make the best health care decisions in the patient’s particular circumstances and in light of the patient’s needs, lifestyle, combination of conditions, and desired outcomes.

(59) “Physician Care Organization (PCO)” means a PHP that contracts with the Authority to provide partially-capitated health services under OHP exclusive of inpatient hospital services.

(60) “Potential Member” means a person who meets the eligibility requirements to enroll in the Oregon Health Plan but has not yet enrolled with a specific PHP or CCO.

(61) “Premium” means:

(a) CCO payment when the payment is made by the Authority to the CCO for purposes of OAR 410-141-3340 to 410-141-3395;

(b) Also includes any other revenue received by the CCO for the provision of healthcare services over a defined period of time.

(62) “Primary Care Management Services” means services that ensure PCM members obtain health services that are necessary to maintain physical and emotional development and health.

(63) “Primary Care Manager (PCM)” means a primary care provider who agrees to provide primary care management services to their members.

(64) “Prioritized List of Health Services” means the listing of condition and treatment pairs developed by the Health Evidence Review Commission for the purpose of administering OHP health services.

(65) “Service Area” means the geographic area within which the PHP or CCO agreed under contract with the Authority to provide health services.

(66) “Substance Use Disorder (SUD) Services” means assessment, treatment, and rehabilitation on a regularly scheduled basis or in response to crisis for alcohol or other drug abuse for dependent members and their family members or significant others, consistent with Level I, Level II, or Level III of the American Society of Addiction Medicine Patient Placement Criteria 2-Revision (ASAM PPC-2R). SUD is an interchangeable term with Chemical Dependency (CD), Alcohol and other Drug (AOD), and Alcohol and Drug (A & D).

(67) “Treatment Plan” for behavioral health consists of the following three components:

(a) “Emergency Response System” means the coordinated method of triaging the mental health service needs of members and providing covered services when needed. The system operates 24-hours a day, 7-days a week and includes, but is not limited to: after hours on call staff, telephone and in person screening, outreach, and networking with hospital emergency rooms and police.

(b) “Emergency Services” means covered services furnished by a provider that is qualified to furnish these services and that are needed to evaluate or stabilize an emergency situation.

(c) “Services Coordination” means services provided to members who require access to and receive services from one or more Allied Agencies or program components according to the treatment plan. Services provided may include establishing pre-commitment service linkages, advocating for treatment needs, and providing assistance in obtaining entitlements based on mental or emotional disability.

(68) “Treatment Plan” for physical and dental health consists of the following two components:

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(a) "Emergency Services Related to Physical Health" means services from a qualified provider necessary to evaluate or stabilize an emergency medical condition including inpatient and outpatient treatment that may be necessary to assure within reasonable medical probability that the member's condition is not likely to materially deteriorate from or during a member's discharge from a facility or transfer to another facility.

(b) "Services Coordination" means services provided to members who require access to and receive covered services or long-term care services from one or more allied agencies or program components according to the treatment plan. Services provided may include establishing pre-commitment service linkages, advocating for treatment needs, and providing assistance in obtaining entitlements based on mental or emotional disability;

(69) "Service Authorization Request" means a member's initial or continuing request for the provision of a service including member requests made by their provider or the member's authorized representative.

(70) "Valid Preauthorization" means a document the Authority, a PHP, or CCO receives requesting a health service for a member who would be eligible for the service at the time of the service, and the document contains:

- (a) A beginning and ending date not exceeding twelve months; and
- (b) All data fields required for processing the request or payment of the service including the appropriate billing codes.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.065

Hist.: HR 31-1993, f. 10-14-93, cert. ef. 2-1-94; HR 7-1994, f. & cert. ef. 2-1-94; OMAP 21-1998, f. & cert. ef. 7-1-98; OMAP 39-1999, f. & cert. ef. 10-1-99; OMAP 26-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 29-2001, f. 8-13-01, cert. ef. 10-1-01; OMAP 13-2002, f. & cert. ef. 4-1-02; OMAP 57-2002, f. & cert. ef. 10-1-02; OMAP 4-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 14-2003, f. 2-28-03, cert. ef. 3-1-03; OMAP 50-2003, f. 7-31-03, cert. ef. 8-1-03; OMAP 37-2004(Temp), f. 5-27-04, cert. ef. 6-1-04 thru 11-15-04; OMAP 47-2004, f. 7-22-04, cert. ef. 8-1-04; OMAP 27-2005, f. 4-20-05, cert. ef. 5-1-05; OMAP 46-2005, f. 9-9-05, cert. ef. 10-1-05; OMAP 65-2005, f. 11-30-05, cert. ef. 1-1-06; OMAP 23-2006, f. 6-12-06, cert. ef. 7-1-06; OMAP 46-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 34-2008, f. 11-26-08, cert. ef. 12-1-08; DMAP 45-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 16-2010, f. 6-11-10, cert. ef. 7-1-10; DMAP 42-2010, f. 12-28-10, cert. ef. 1-1-11; DMAP 11-2012(Temp), f. & cert. ef. 3-16-12 thru 9-11-12; DMAP 37-2012, f. & cert. ef. 8-1-12; DMAP 45-2014, f. 7-15-14, cert. ef. 8-1-14

## 410-141-0050

### MHO Enrollment for Children Receiving Child Welfare Services

Pursuant to and in the administration of the Authority in OAR 410-141-0060, Children, Adults and Families (CAF) or the Oregon Youth Authority (OYA) selects Prepaid Health Plans (PHPs) for a child receiving CAF Child Welfare services or OYA services with the exception of children in subsidized adoption and guardianship. This rule implements and further describes how the Oregon Health Authority (Authority) shall administer its authority under 410-141-0060 and 410-141-3060 for purposes of making enrollment decisions and 410-141-0080 and 410-141-3080 for purposes of making disenrollment decisions for children receiving CAF Child Welfare services or OYA services;

(1) The Authority has determined that, to the maximum extent possible, all children receiving CAF services should be enrolled in Mental Health Organizations (MHOs) or Coordinated Care Organizations (CCO) at the next available enrollment date following eligibility, redetermination, or upon review by the Authority, unless disenrollment from a MHO or CCO is authorized by the Authority in accordance with this section and OAR 410-141-0080 and 410-141-3080:

(a) Notwithstanding OAR 410-141-0060(4)(a) or 410-141-3060 or 410-141-0080(2)(b)(E) or 410-141-3080, children receiving CAF services are not exempt from mandatory enrollment in an MHO or CCO on the basis of third party resources (TPR) mental health services coverage;

(b) A decision to use fee-for-service (FFS) open card for a child receiving CAF services should be reviewed by the Authority if the child's circumstances change and at the time of redetermination to consider whether the child should be enrolled in a MHO or CCO.

(2) When a child receiving CAF services is being transferred from one MHO to another or one CCO to another or for children transferring from FFS to a MHO or CCO, the MHO or CCO shall facilitate coordination of care consistent with OAR 410-141-0160 or 410-141-3160:

(a) MHOs and CCOs shall work closely with the Authority to ensure continuous MHO or CCO enrollment for children receiving CAF services;

(b) If the Authority determines that disenrollment should occur, the MHO or CCO shall continue to be responsible for providing covered services until the disenrollment date established by the Authority, which shall provide for an adequate transition to the next responsible MHO or CCO.

(3) It is not unusual for a child receiving CAF services to experience a change of placement that may be permanent or temporary in nature. Consistent with OAR 410-141-0080 or 410-141-3080, the Authority will

verify the address change information to determine whether a child receiving CAF services no longer resides in the MHO's or CCO's service area:

(a) A temporary absence as a result of a temporary placement out of the MHO's or CCO's service area does not represent a change of residence if the Authority determines that the child is reasonably likely to return to a placement in the MHO's or CCO's service area at the end of the temporary placement;

(b) Unless a corresponding change in MHO capitation rates is implemented, a child receiving CAF services placed in behavioral rehabilitation services (BRS) settings shall be enrolled in the MHO or CCO that serves the region in which the BRS setting is located, unless an out of area exception is requested by the MHO or CCO and agreed to by the Authority for purposes related to continuity of care.

(4) If the child receiving CAF services is enrolled in a MHO or CCO on the same day the child is admitted to psychiatric residential treatment services (PRTS), the MHO or CCO shall be responsible for covered services during that placement even if the location of the facility is outside of the MHO's or CCO service area:

(a) The child receiving CAF services is presumed to continue to be enrolled in the MHO or CCO with which the child was most recently enrolled. An admission to a PRTS facility shall be deemed a temporary placement for purposes of MHO or CCO enrollment. Any address change or Authority system identifier (e.g., C5 status) change associated with the placement in the PRTS facility does not constitute a change of residence for purposes of MHO or CCO enrollment and shall not constitute a basis for disenrollment from the MHO or CCO, notwithstanding OAR 410-141-0080 and 410-141-3080. If the Authority determines that a child was disenrolled for reasons not consistent with these rules, the Authority shall re-enroll the child with the appropriate MHO or CCO and assign an enrollment date that provides for continuous MHO or CCO coverage with the appropriate MHO or CCO. If the child had been enrolled in a different MHO or CCO in error, the Authority shall disenroll the child from that MHO or CCO and recoup the capitation payments;

(b) Immediately upon discharge from long-term psychiatric care and prior to admission to a PRTS, a child receiving CAF services should be enrolled in an MHO or CCO. At least two weeks prior to discharge of a child receiving CAF services from a long-term psychiatric care (SAIP, SCIP, or STS) facility to a PRTS facility, the long-term care facility shall consult with the Authority about which MHO or CCO will be assigned in order to provide for enrollment in the MHO or CCO and shall make every reasonable effort within the laws governing confidentiality to consult with the MHO or CCO that will be assigned in order to provide for continuity of care upon discharge from long-term psychiatric care.

(5) Notwithstanding OAR 410-141-0060(6) and (7), 410-141-3060, 410-141-0080, and 410-141-3080, if a child receiving CAF services is enrolled in a MHO or CCO after the first day of an admission to PRTS, the date of enrollment shall be effective the next available enrollment date following discharge from PRTS to the MHO or CCO assigned by the Authority:

(a) For purposes of these rules and to assure continuity of care for the child upon discharge, the next available enrollment date shall mean immediately upon discharge;

(b) At least two weeks prior to discharge, the PRTS facility shall consult with the Authority about which MHO or CCO will be assigned and shall make every reasonable effort within the laws governing confidentiality to consult with the MHO or CCO that will be assigned in order to provide for continuity of care upon discharge.

Stat. Auth.: ORS 413.042

Stats. Implemented: 414.065

Hist.: OMAP 30-2006(Temp), f. 6-30-06, cert. ef. 7-1-06 thru 10-27-06; OMAP 36-2006, f. 10-26-06, cert. ef. 10-27-06; DMAP 45-2014, f. 7-15-14, cert. ef. 8-1-14

## 410-141-0120

### Managed Care Prepaid Health Plan Provision of Health Care Services

(1) Prepaid Health Plans (PHPs) shall have written policies and procedures that ensure the provision of all medically and dentally appropriate covered services, including urgent care services and emergency services, preventive services and ancillary services, and in those categories of services included in contract or agreements with the Division of Medical Assistance Programs (Division) and Addictions and Mental Health (AMH). PHPs shall communicate these policies and procedures to providers, regularly monitor providers' compliance with these policies and procedures, and take any corrective action necessary to ensure provider compliance. PHPs shall document all monitoring and corrective action activities:

(a) PHPs shall ensure that all participating providers providing covered services to Division members are credentialed upon initial contract

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with the PHP and recredentialed no less frequently than every three years thereafter. The credentialing and recredentiaing process shall include review of any information in the National Practitioners Databank and a determination based on the requirements of the discipline or profession that participating providers have current licensure in the state in which they practice, appropriate certification, applicable hospital privileges, and appropriate malpractice insurance. This process shall include a review and determination based on the activity and results of a professional quality improvement review. PHPs may elect to contract for or to delegate responsibility for this process. PHPs shall accept both the Oregon Practitioner Credentialing Application and the Oregon Practitioner Recredentiaing Application, both of which were approved by the Advisory Committee on Physician Credentialing Information (ACPI) on September 28, 2004, thereby implementing ORS 442.807. PHPs shall retain responsibility for delegated activities including oversight of the following processes:

(A) PHPs shall ensure that covered services are provided within the scope of license or certification of the participating provider or facility and within the scope of the participating provider's contracted services and that participating providers are appropriately supervised according to their scope of practice;

(B) PHPs shall provide training for PHP staff and participating providers and their staff regarding the delivery of covered services, Oregon Health Plan (OHP) administrative rules, and the PHP's administrative policies;

(C) PHPs shall maintain records documenting academic credentials, training received, licenses or certifications of staff and facilities used, and reports from the National Practitioner Data Bank and shall provide accurate and timely information about license or certification expiration and renewal dates to the Division. PHPs may not refer Division members to or use providers who do not have a valid license or certification required by state or federal law. If a PHP knows or has reason to know that a provider's license or certification is expired or not renewed or is subject to licensing or certification sanction, the PHP shall immediately notify the member's Provider Services Unit.

(D) PHPs may not refer members to or use providers who have been terminated from the Division or excluded as Medicare and Medicaid providers by Centers for Medicare and Medicaid (CMS) or who are subject to exclusion for any lawful conviction by a court for which the provider could be excluded under 42 CFR 1001.101. PHPs may not accept billings for services to members provided after the date of such provider's exclusion, conviction, or termination. The Oregon Health Authority (Authority) has developed disclosure statement forms for individual practitioners and entities. If a PHP wishes to use their own disclosure statement form, they shall submit to their Coordinated Care Account Representative (CAR) for Authority approval prior to use. PHPs shall obtain information required on the appropriate disclosure form from individual practitioners and entities and shall retain the disclosure statements in the PHP credential files. If a PHP knows or has reason to know that a provider has been convicted of a felony or misdemeanor related to a crime or violation of federal or state laws under Medicare, Medicaid, or Title XIX (including a plea of "nolo contendere"), the PHP shall immediately notify the Division's Provider Services Unit.

(E) PHPs shall obtain and use the Division's provider enrollment (encounter) number for providers when submitting provider capacity reports. Only registered National Provider Identifiers (NPIs) and taxonomy codes are to be used for purposes of encounter data submission, prior to submitting encounter data in connection with services by the provider. Effective January 1, 2007, provider number "999999" may no longer be used in encounter data reporting or provider capacity reporting. PHPs shall require each qualified provider to have and use a National Provider Identifier as enumerated by the National Plan and Provider Enumeration System (NPPES).

(F) The provider enrollment request (for encounter purposes) and disclosure statement described in paragraphs (D) and (E) require the disclosure of taxpayer identification numbers. The taxpayer identification number will be used for the administration of this program including provider enrollment, internal verification and administrative purposes for the medical assistance program, administration of tax laws, and may be used to confirm whether the individual or entity is subject to exclusion from participation in the medical assistance program. Taxpayer identification number includes Employer Identification Number (EIN), Social Security Number (SSN), and the Individual Tax Identification Number (ITIN) used to identify the individual or entity on the enrollment request form or disclosure statement. Disclosure of tax identification numbers for these purposes is mandatory. Failure to submit the requested taxpayer identification

number(s) may result in denial of enrollment as a provider, denial of a provider number for encounter purposes, denial of continued enrollment as a provider, and deactivation of all provider numbers used by the provider for encounters.

(b) FCHPs, Physician Care Organization (PCOs), and Dental Care Organizations (DCOs) shall have written procedures that provide newly enrolled members with information about which participating providers are currently not accepting new patients (except for staff models);

(c) FCHPs, PCOs, and DCOs shall have written procedures that allow and encourage a choice of a Primary Care Provider (PCP) or clinic for physical health and dental health services by each member. These procedures shall enable a member to choose a participating PCP or clinic (when a choice is available for PCPs or clinics) to provide services within the scope of practice to that member;

(d) If the member does not choose a PCP within 30 calendar days from the date of enrollment, the FCHP or PCO shall ensure the member has an ongoing source of primary care appropriate to his or her needs by formally designating a practitioner or entity. FCHPs and PCOs that assign members to PCPs or clinics shall document the unsuccessful efforts to elicit the member's choice before assigning a member to a PCP or clinic. FCHPs and PCOs who assign PCPs before 30 calendar days after enrollment shall notify the member of the assignment and allow the member 30 calendar days after assignment to change the assigned PCP or clinic.

(2) In order to make advantageous use of the system of public health services available through county health departments and other publicly supported programs and to ensure access to public health services through contract under ORS Chapter 414-153:

(a) Unless cause can be demonstrated to the member's satisfaction why such an agreement is not feasible, FCHPs and PCOs shall execute agreements with publicly funded providers for payment of point-of-contact services in the following categories:

- (A) Immunizations;
- (B) Sexually transmitted diseases; and
- (C) Other communicable diseases.

(b) The following services may be received by Division members from appropriate non-participating Medicaid providers. If the following services are not referred by the FCHP or PCO in accordance with the FCHP's or PCO's referral process (except as provided for under 410-141-0420 Billing and Payment under the OHP), the member is responsible for payment of such services:

- (A) Family planning services; and
- (B) Human immunodeficiency virus (HIV) and acquired immune deficiency syndrome (AIDS) prevention services.

(c) FCHPs and PCOs are encouraged to execute agreements with publicly funded providers for authorization of and payment for services in the following categories:

- (A) Maternity case management;
- (B) Well-child care;
- (C) Prenatal care;
- (D) School-based clinic services;
- (E) Health services for children provided through schools and Head Start programs; and

(F) Screening services to provide early detection of health care problems among low-income women and children, migrant workers, and other special population groups.

(d) Recognizing the social value of partnerships between county health departments, other publicly supported programs, and health providers, FCHPs and PCOs are encouraged to involve publicly supported health care and service programs in the development and implementation of managed health care programs through inclusion on advisory and planning committees;

(e) FCHPs and PCOs shall report to the Division on their status in executing agreements with publicly funded providers and on the involvement of publicly supported health care and service programs in the development and implementation of their program on an annual basis.

(3) FCHPs and PCOs shall ensure a newly enrolled member receives timely, adequate, and appropriate health care services necessary to establish and maintain the health of the member. An FCHP's liability covers the period between the member's enrollment and disenrollment with the FCHP, unless the member is hospitalized at the time of disenrollment. In such an event, an FCHP is responsible for the inpatient hospital services until discharge or until the member's PCP or designated practitioner determines the care is no longer medically appropriate.

(4) A PCO's liability covers the period between the member's enrollment and disenrollment with the PCO, unless the member is hospitalized at

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the time of disenrollment. In such an event, the PCO is not responsible for the inpatient hospital services by definition and the inpatient hospital services will be the responsibility of the Division.

(5) The member shall obtain all covered services, either directly or upon referral, from the PHP responsible for the service from the date of enrollment through the date of disenrollment.

(6) FCHPs and PCOs with a Medicare HMO component and MHOs have significant and shared responsibility for capitated services and shall coordinate benefits for shared members to ensure that the member receives all medically appropriate services covered under respective capitation payments. If the fully dual eligible member is enrolled in a FCHP or PCO with a Medicare HMO component, the following apply:

(a) Mental health services covered by Medicare shall be obtained from the FCHP or PCO or upon referral by the FCHP or PCO;

(b) Mental health services that are not covered by the FCHP or PCO that are covered by the MHO shall be obtained from the MHO or upon referral by the MHO.

(7) PHPs shall coordinate services for each member who requires services from agencies providing health care services not covered under the capitation payment. The PCP shall arrange, coordinate, and monitor other medical and mental health or dental care for that member on an ongoing basis except as provided for in Section (7)(c) of this rule:

(a) PHPs shall establish and maintain working relationships with local or allied agencies, community emergency service agencies, and local providers;

(b) PHPs shall refer members to the divisions of the Authority and local and regional allied agencies that may offer services not covered under the capitation payment;

(c) FCHPs and PCOs may not require members to obtain the approval of a PCP in order to gain access to mental health and Substance Use Disorder assessment and evaluation services. Division members may refer themselves to MHO services.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 192.518 - 192.526, 556.320, 414.065, 414.727 & 441.223

Hist.: HR 31-1993, f. 10-14-93, cert. ef. 2-1-94; HR 39-1994, f. 12-30-94, cert. ef. 1-1-95; HR 17-1995, f. 9-28-95, cert. ef. 10-1-95; HR 19-1996, f. & cert. ef. 10-1-96; HR 25-1997, f. & cert. ef. 10-1-97; OMAP 21-1998, f. & cert. ef. 7-1-98; OMAP 39-1999, f. & cert. ef. 10-1-99; OMAP 26-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 29-2001, f. 8-13-01, cert. ef. 10-1-01; OMAP 57-2002, f. & cert. ef. 10-1-02; OMAP 50-2003, f. 7-31-03, cert. ef. 8-1-03; OMAP 27-2005, f. 4-20-05, cert. ef. 5-1-05; OMAP 65-2005, f. 11-30-05, cert. ef. 1-1-06; DMAP 40-2008, f. 12-11-08, cert. ef. 1-1-09; DMAP 42-2010, f. 12-28-10, cert. ef. 1-1-11; DMAP 45-2014, f. 7-15-14, cert. ef. 8-1-14

## 410-141-0180

### Oregon Health Plan Prepaid Health Plan Record Keeping

(1) Maintenance and Security: Prepaid Health Plans (PHPs) shall have written policies and procedures that ensure maintenance of a record keeping system that includes maintaining the security of records as required by the Health Insurance Portability and Accountability Act (HIPAA), 42 USC § 1320-d et seq., and the federal regulations implementing the Act, and complete clinical records that document the care received by the members from the PHP's primary care and referral providers. PHPs shall communicate these policies and procedures to participating providers, regularly monitor participating providers' compliance with these policies and procedures, and take any corrective action necessary to ensure provider compliance. PHPs shall document all monitoring and corrective action activities. Such policies and procedures shall ensure that records are secured, safeguarded, and stored in accordance with applicable Oregon Revised Statutes (ORS) and Oregon Administrative Rules (OAR).

(2) Confidentiality and Privacy: PHPs and PHP's participating providers shall have written policies and procedures to ensure that clinical records related to the member's individual identifiable health information and the receiving of services are kept confidential and protected from unauthorized use and disclosure consistent with the requirements of HIPAA and in accordance with ORS 179.505 through 179.507, 411.320, 433.045(3), 42 CFR Part 2, 42 CFR Part 431, Subpart F, 45 CFR 205.50, and section (3) of this rule. If the PHP is a public body within the meaning of the Oregon public records law, the policies and procedures shall ensure that member privacy is maintained in accordance with 192.502(2), 192.502(8) (Confidential under Oregon law) and 192.502(9) (Confidential under Federal law) or other relevant exemptions:

(a) PHPs and their participating providers may not release or disclose any information concerning a member for any purpose not directly connected with the administration of Title XIX of the Social Security Act except as directed by the member;

(b) Except in an emergency, PHPs' participating providers shall obtain a written authorization for release of information from the member or the legal guardian or the member's legal Power of Attorney for Health

Care Decisions before releasing information. The written authorization for release of information shall specify the type of information to be released and the recipient of the information and shall be placed in the member's record. In an emergency, release of service information shall be limited to the extent necessary to meet the emergency information needs and then only to those persons involved in providing emergency medical services to the member;

(c) PHPs may consider a member age 14 or older competent to authorize or prevent disclosure of mental health and substance use disorder treatment outpatient records until the custodial parent or legal guardian becomes involved in an outpatient treatment plan consistent with the member's clinical treatment requirements.

(3) Exchange of Protected Health Information for Treatment Purposes without Authorization: In accordance with ORS 192.518 to 192.526 and with required acknowledgement, the Authority and PHP's may share the following protected health information without member authorization for the purpose of treatment activities. The protected health information that may be disclosed, commonly found in claims or encounters, includes the following:

- (a) Oregon Health Plan member name;
- (b) Medicaid recipient number;
- (c) Performing provider number;
- (d) Hospital provider name and attending physician name;
- (e) Diagnosis;
- (f) Dates of service;
- (g) Procedure code;
- (h) Revenue code;
- (i) Quantity of units of service provided;
- (j) Medication prescription and monitoring;

(4) Access to clinical records:

(a) Provider access to clinical records:

(A) PHPs shall release health service information requested by a provider involved in the member's care within ten working days of receiving a signed authorization for release of information;

(B) Mental Health Organizations (MHOs) shall assure that directly operated and subcontracted service components, as well as other cooperating health service providers, have access to the applicable contents of a member's mental health record when necessary for use in the member's diagnosis or treatment. Such access is permitted under ORS 179.505(6);

(b) Member Access to Clinical Records: Except as provided in ORS 179.505(9), PHPs' participating providers shall upon request, provide the member access to their own clinical record, allow for the record to be amended or corrected, and provide copies within ten working days of the request. PHPs' participating providers may charge the member for reasonable duplication costs;

(c) Third Party Access to Records: Except as otherwise provided in this rule, PHPs' participating providers shall upon receipt of a member's written authorization for release of information, provide access to the member's clinical record. PHPs' participating providers may charge for reasonable duplication costs;

(d) Authority Access to Records: PHPs shall cooperate with the Division, the Addictions and Mental Health Division (AMH), the Medicaid Fraud Unit, and AMH representatives for the purposes of audits, inspection, and examination of members' clinical and administrative records.

(5) Retention of Records: All clinical records shall be retained for seven years after the date of services for which claims are made. If an audit, litigation, research and evaluation, or other action involving the records is started before the end of the seven-year period, the clinical records shall be retained until all issues arising out of the action are resolved.

(6) Requirements for Clinical Records: PHPs shall have policies and procedures that ensure maintenance of a clinical record keeping system that is consistent with state and federal regulations to which the PHP is subject. The system shall assure accessibility, uniformity, and completeness of clinical information that fully documents the member's condition and the covered and non-covered services received from PHPs' participating or referred providers. PHPs shall communicate these policies and procedures to participating providers, regularly monitor compliance with these policies and procedures, and take any corrective action necessary to ensure compliance. PHPs shall document all monitoring and corrective action activities:

(a) A clinical record shall be maintained for each member receiving services that documents all types of care needed or delivered in all settings whether services are delivered during or after normal clinic hours;

(b) All entries in the clinical record shall be signed and dated;

(c) Errors to the clinical record shall be corrected as follows:

(A) Incorrect data shall be crossed through with a single line;

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(B) Correct and legible data shall be added followed by the date corrected and initials of the individual making the correction;

(C) Removal or obliteration of errors shall be prohibited;

(d) The clinical record shall reflect a signed and dated authorization for treatment for the member, his or her legal guardian, or the Power of Attorney for Health Care Decisions for any invasive treatments;

(e) The PCP's or clinic's clinical record shall include data that forms the basis of the diagnostic impression of the member's chief complaint sufficient to justify any further diagnostic procedures, treatments, recommendations for return visits, and referrals. The PCP or clinic's member's clinical record receiving services shall include the following information as applicable:

(A) Member name, date of birth, sex, address, telephone number, and identifying number as applicable;

(B) Name, address, and telephone number of next of kin, legal guardian, Power of Attorney for Health Care Decisions, or other responsible party;

(C) Medical, dental, or psychosocial history as appropriate;

(D) Dates of service;

(E) Names and titles of individuals performing the services;

(F) Physicians' orders;

(G) Pertinent findings on examination and diagnosis;

(H) Description of medical services provided including medications administered or prescribed; tests ordered or performed, and results;

(I) Goods or supplies dispensed or prescribed;

(J) Description of treatment given and progress made;

(K) Recommendations for additional treatments or consultations;

(L) Evidence of referrals and results of referrals;

(M) Copies of the following documents if applicable:

(i) Mental health, psychiatric, psychological, psychosocial or functional screenings, assessments, examinations, or evaluations;

(ii) Plans of care including evidence that the member was jointly involved in the development of the mental health treatment plan;

(iii) For inpatient and outpatient hospitalizations, history and physical, dictated consultations, and discharge summary;

(iv) Emergency department and screening services reports;

(v) Consultation reports;

(vi) Medical education and medical social services provided;

(N) Copies of signed authorizations for release of information forms;

(O) Copies of medical and mental health directives;

(f) Based on written policies and procedures, the clinical record keeping system developed and maintained by PHPs' participating providers shall include sufficient detail and clarity to permit internal and external clinical audit to validate encounter submissions and to assure medically appropriate services are provided consistent with the documented needs of the member. The system shall conform to accepted professional practice and facilitate an adequate system for follow up treatment;

(g) The PCP or clinic shall have policies and procedures that accommodate members requesting to review and correct or amend their clinical record;

(h) PHPs' shall maintain other records in either the clinical record or within the PHP's administrative offices. Other records shall include the following:

(A) Names and phone numbers of the member's prepaid health plans, primary care physician or clinic, primary dentist, and mental health Practitioner, if any in the MHO records;

(B) Copies of Client Process Monitoring System (CPMS) also known as Measures and Outcomes Tracking System (MOTS) enrollment forms in the MHO's records;

(C) Copies of long-term psychiatric care determination request forms in the MHO's records;

(D) Evidence that the member has received a fee schedule for services not covered under the Capitation Payment in the MHO's records;

(E) Evidence that the member has been informed of his or her rights and responsibilities in the MHO records;

(F) ENCC records in the FCHP's or PCO's records;

(G) Complaint and Appeal records; and

(H) Disenrollment requests for cause and the supporting documentation.

Stat. Auth.: ORS 409.110, 413.042 & 414.065  
Stats. Implemented: ORS 414.651

Hist.: HR 31-1993, f. 10-14-93, cert. ef. 2-1-94; HR 17-1995, f. 9-28-95, cert. ef. 10-1-95; HR 19-1996, f. & cert. ef. 10-1-96; HR 25-1997, f. & cert. ef. 10-1-97; OMAP 26-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 61-2003, 9-5-03, cert. ef. 10-1-03; OMAP 27-2005, f. 4-20-05, cert. ef. 5-1-05; OMAP 46-2005, f. 9-9-05, cert. ef. 10-1-05; OMAP 23-2006, f. 6-12-06, cert. ef. 7-1-06; DMAP 22-2007, f. 12-11-07 cert. ef. 1-1-08; DMAP 45-2014, f. 7-15-14, cert. ef. 8-1-14

## 410-141-0270

### Prepaid Health Plan Marketing Requirements for Potential Members

(1) For the purposes of this rule, the following definitions apply:

(a) "Cold-call Marketing" means any unsolicited personal contact with a potential member for the purpose of marketing by the PHP; Cold-call marketing methodologies may include, but are not limited to, door to door, telephone, mail, or e-mail.

(b) "Marketing" means any communication from a PHP to a potential member who is not enrolled in the PHP that can reasonably be interpreted as intended to compel or entice the potential members to enroll in that particular PHP;

(c) "Marketing Materials" means materials that are produced in any medium by or on behalf of a PHP and that can reasonably be interpreted as intended to market to potential members;

(d) "Outreach" means any communication from a PHP to any audience that cannot reasonably be interpreted as intended to compel or entice a potential member to enroll in a particular PHP. Outreach activities include, but are not limited to, the act of raising the awareness of the PHP, the PHP's subcontractors and partners, the PHP contractually required programs and services, and the promotion of healthful behaviors, health education, and health related events.

(e) "Outreach Materials" means materials that are produced in any medium, by or on behalf of a PHP that cannot reasonably be interpreted as intended to compel or entice a potential member to enroll in a particular PHP.

(f) "Potential Member" means a person who meets the eligibility requirements to enroll in the Oregon Health Plan but has not yet enrolled with a specific PHP.

(2) PHPs must comply with the information required in 42 CFR 438.10, 438.100, and 438.104 to ensure that before enrolling OHP clients, the PHP provides accurate oral and written information a potential member needs to make an informed decision on whether to enroll in that PHP. In so doing, the PHP must:

(a) Not distribute any marketing materials without first obtaining state approval;

(b) Distribute the materials to its entire service area as indicated in its PHP contract;

(c) Not seek to compel or entice enrollment in conjunction with the sale of or offering of any private insurance;

(d) Not directly or indirectly engage in door to door, telephone, or cold-call marketing activities.

(3) The creation of name recognition shall not constitute an attempt by the PHP to compel or entice a client's enrollment and are expressly permitted. Communication methodologies may include, but are not limited to: brochures, pamphlets, newsletters, posters, fliers, websites, bus wraps, bill boards, web banners, health fairs, or health related events.

(4) PHPs' or their subcontractor's communications that express participation in or support for a PHP by its founding organizations or its subcontractors shall not constitute an attempt to compel or entice a client's enrollment.

(5) PHPs shall update plan access information with OHA on a monthly basis for use in updating the availability charts. OHA will confirm information before posting.

(6) PHPs have sole accountability for producing or distributing materials following OHA approval.

(7) PHPs shall comply with the Authority marketing materials submission guidelines. PHPs shall participate in development of guidelines with the Authority through a transparent public process, including stakeholder input. The guidelines include, but are not limited to:

(a) A list of communication or outreach materials subject to review by the Authority;

(b) A clear explanation of the Authority's process for review and approval of marketing materials;

(c) A process for appeals of the Authority's edits or denials;

(d) A marketing materials submission form to ensure compliance with PHP marketing rules; and

(e) An update of plan availability information submitted to the Authority on a monthly basis for review and posting.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.065

Hist.: OMAP 29-2001, f. 8-13-01, cert. ef. 10-1-01; OMAP 61-2003, 9-5-03, cert. ef. 10-1-03; DMAP 45-2014, f. 7-15-14, cert. ef. 8-1-14

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## 410-141-0410

### Oregon Health Plan Primary Care Managers

(1) Primary Care Managers (PCM) provide Primary Care Management Services under the Oregon Health Plan. PCMs provide Primary Care Management Services as defined in OAR 410-141-0000 PCM Services:

(a) Preventive services, primary care services, and specialty services including those provided by physicians, nurse practitioners, physician assistants, naturopaths, chiropractors, podiatrists, rural health clinics, migrant and community health clinics, federally qualified health centers, county health departments, Indian health service clinics, and tribal health clinics;

(b) Inpatient hospital services; and

(c) Outpatient hospital services except laboratory, x-ray, and maternity management services.

(2) Services that are not PCM Case Managed Services include, but are not limited to, the following:

(a) Anesthesiology services;

(b) Dental care services;

(c) Durable medical equipment;

(d) Family Planning Services;

(e) Immunizations, treatment for communicable diseases, and treatment for sexually transmitted diseases provided by a publicly funded clinic;

(f) Laboratory services;

(g) Maternity case management services;

(h) Medical transportation services;

(i) Mental health and Substance Use Disorder treatment (SUD) services;

(j) Pharmacy services;

(k) Physical therapy, occupational therapy, speech therapy, and audiology services;

(l) Preventive services for acquired immune deficiency syndrome and human immune-deficiency virus;

(m) Routine eye examinations and dispensing of vision materials;

(n) School-based services provided under an individual education plan or an individual family service plan;

(o) Targeted case management services; and

(p) Diagnostic imaging.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.651

Hist.: HR 7-1994, f. & cert. ef. 2-1-94; OMAP 61-2003, 9-5-03, cert. ef. 10-1-03; OMAP 69-2004, f. 9-15-04, cert. ef. 10-1-04; OMAP 23-2006, f. 6-12-06, cert. ef. 7-1-06; DMAP 45-2014, f. 7-15-14, cert. ef. 8-1-14

## 410-141-0420

### Managed Care Prepaid Health Plan Billing and Payment under the Oregon Health Plan

The Division of Medical Assistance Programs (Division) may have specific definitions for common terms. Please see OAR 410-141-0000, Definitions, in conjunction with this rule.

(1) Providers shall submit all billings for OHP members to Prepaid Health Plans (PHPs) and the Division within four months of the date of service, subject to other applicable Division billing rules. A billing submitted within four months of the date of service that was denied may be resubmitted within six months of the date of service. Providers shall submit billings to PHPs within the four-month time frame except in the following cases in which providers shall submit billings to PHPs within 12 months of the date of service:

(a) Pregnancy;

(b) Eligibility issues such as retroactive deletions or retroactive enrollments;

(c) Medicare is the primary payer;

(d) Other cases that could have delayed the initial billing to the PHP (which does not include failure of provider to certify the Division member's eligibility); or

(e) Third Party Liability (TPL). Pursuant to 42 CFR 136.61, subpart G: Indian Health Services and the amended Public Law 93-638 under the Memorandum of Agreement that Indian Health Service and 638 Tribal Facilities are the payer of last resort and is not considered an alternative liability or TPL.

(2) Providers shall be enrolled with the Division to be eligible for Division fee-for-service (FFS) payments. Mental health providers, except Federally Qualified Health Centers (FQHC), shall be approved by the Local Mental Health Authority (LMHA) and the Addictions and Mental Health (AMH) Division before enrollment with the Division or to be eligi-

ble for PHP payment for services. Providers may be retroactively enrolled in accordance with OAR 410-120-1260 (Provider Enrollment).

(3) Providers, including mental health providers, shall be enrolled with the Division either as a Medicaid provider or an encounter-only provider prior to submission of encounter data to ensure the servicing provider is not excluded per federal and state standard as defined in OAR 407-120-0300.

(4) Providers shall verify before rendering services that the member is eligible for the Division of Medical Assistance Programs on the date of service using the Division tools and the PHP's tools, as applicable, and that the service to be rendered is covered under the OHP Benefit Package of covered services. Providers shall also identify the party responsible for covering the intended service and seek preauthorizations from the appropriate payer before rendering services. Before providing a non-covered service, the provider shall complete and have the member sign a Division 3165, or facsimile, as described in OAR 410-120-1280.

(5) PHPs shall pay for all capitated services. These services shall be billed directly to the PHP, unless the PHP or the Division specifies otherwise. PHPs may require providers to obtain preauthorization to deliver certain capitated services.

(6) Payment by the PHP to participating providers for capitated services is a matter between the PHP and the participating provider except as follows:

(a) Preauthorizations:

(A) PHPs shall have written procedures for processing preauthorization requests received from any provider. The procedures shall specify time frames for:

(i) Date stamping preauthorization requests when received;

(ii) Determining within a specific number of days from receipt whether a preauthorization request is valid or non-valid;

(iii) The specific number of days allowed for follow up on pended preauthorization requests to obtain additional information;

(iv) The specific number of days following receipt of the additional information that a redetermination shall be made;

(v) Providing services after office hours and on weekends that require preauthorization;

(vi) Sending notice of the decision with appeal rights to the member when the determination is made to deny the requested service as specified in OAR 410-141-0263.

(B) PHPs shall make a determination on at least 95 percent of valid preauthorization requests within two working days of receipt of a preauthorization or reauthorization request related to urgent services, alcohol and drug services, or care required while in a skilled nursing facility. Preauthorization for prescription drugs shall be completed and the pharmacy notified within 24 hours. If a preauthorization for a prescription cannot be completed within the 24 hours, the PHP shall provide for the dispensing of at least a 72-hour supply if the medical need for the drug is immediate. PHPs shall notify providers of such determination within two working days of receipt of the request;

(C) For expedited preauthorization requests in which the provider indicates or the PHP determines that following the standard timeframe could seriously jeopardize the member's life or health or ability to attain, maintain, or regain maximum function:

(i) The PHP shall make an expedited authorization decision and provide notice as expeditiously as the member's health condition requires and no later than three working days after receipt of the request for service;

(ii) The PHP may extend the three working days-time period by up to 14 calendar days if the member requests an extension or if the PHP justifies to the Division a need for additional information and how the extension is in the member's interest.

(D) For all other preauthorization requests, PHPs shall notify providers of an approval, denial, or need for further information within 14 calendar days of receipt of the request. PHPs shall make reasonable efforts to obtain the necessary information during the 14 day period. However, the PHP may use an additional 14 days to obtain follow-up information if the PHP justifies (to the Division upon request) the need for additional information and how the delay is in the member's interest. If the PHP extends the timeframe, it shall give the member written notice of the reason for the extension as outlined in OAR 410-141-0263. The PHP shall make a determination as the member's health condition requires but no later than the expiration of the extension.

(b) Claims payment:

(A) PHPs shall have written procedures for processing claims submitted for payment from any source. The procedures shall specify time frames for:

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- (i) Date stamping claims when received;
- (ii) Determining within a specific number of days from receipt whether a claim is valid or non-valid;
- (iii) The specific number of days allowed for follow up of pended claims to obtain additional information;
- (iv) The specific number of days following receipt of additional information that a determination shall be made; and
- (v) Sending notice of the decision with appeal rights to the member when the determination is made to deny the claim.

(B) PHPs shall pay or deny at least 90 percent of valid claims within 45 calendar days of receipt and at least 99 percent of valid claims within 60 calendar days of receipt. PHPs shall make an initial determination on 99 percent of all claims submitted within 60 calendar days of receipt;

(C) PHPs shall provide written notification of PHP determinations when the determinations result in a denial of payment for services as outlined in OAR 410-141-0263.

(D) PHPs may not require providers to delay billing to the PHP;

(E) PHPs may not require Medicare be billed as the primary insurer for services or items not covered by Medicare and may not require non-Medicare approved providers to bill Medicare;

(F) PHPs shall not deny payment of valid claims when the potential TPR is based only on a diagnosis, and no potential TPR has been documented in the member's clinical record;

(G) PHPs may not delay or deny payments because a co-payment was not collected at the time of service.

(c) FCHPs, PCOs, and MHOs shall pay for Medicare coinsurances and deductibles up to the Medicare or PHP's allowable for covered services the member receives within the PHP for authorized referral care and for urgent care services or emergency services the member receives from non-participating providers. FCHPs, PCOs, and MHOs are not responsible for Medicare coinsurances and deductibles for non-urgent or non-emergent care members receive from non-participating providers;

(d) FCHPs and PCOs shall pay transportation, meals, and lodging costs for the member and any required attendant for out-of-state services (that the FCHP and PCO has arranged and authorized when those services are available within the state, unless otherwise approved by the Division);

(e) PHPs shall pay for covered services provided by a non-participating provider that were not preauthorized if the following conditions exist:

(A) It can be verified that the participating provider ordered or directed the covered services to be delivered by a non-participating provider; and

(B) The covered service was delivered in good faith without the preauthorization; and

(C) It was a covered service that would have been preauthorized with a participating provider if the PHP's referral protocols had been followed;

(D) The PHP shall make payment to non-participating providers (providers enrolled with the Division that do not have a contract with the PHP) for covered services that are subject to reimbursement from the PHP, the amount specified in OAR 410-120-1295. This rule does not apply to providers that are Type A or Type B hospitals, as they are paid in accordance with ORS 414.727.

(7) Other services:

(a) Members enrolled with PHPs may receive certain services on a Division FFS basis. These services are referred to as non-capitated services;

(b) Certain services shall be authorized by the PHP or the Community Mental Health Program (CMHP) for some mental health services, even though the services are then paid by the Division on a Division FFS basis. Before providing services, providers should verify a member's eligibility via the web portal or AVR. For some mental health services, providers will need to contact the CMHP directly. In addition, the provider may call the PHP to obtain information about coverage for a particular service or preauthorization requirements;

(c) Services authorized by the PHP or CMHP are subject to the rules and limitations of the appropriate Division administrative rules and supplemental information including rates and billing instructions;

(d) Providers shall bill the Division directly for non-capitated services in accordance with billing instructions contained in the Division administrative rules and supplemental information;

(e) The Division shall pay at the Medicaid FFS rate in effect on the date the service is provided subject to the rules and limitations described in the relevant rules, contracts, billing instructions, and Division administrative rules and supplemental information;

(f) The Division may not pay a provider for provision of services for which a PHP has received a capitation payment unless otherwise provided for in OAR 410-141-0120;

(g) When an item or service is included in the rate paid to a medical institution, a residential facility, or foster home, provision of that item or service is not the responsibility of the Division, AMH, or PHP except as provided for in Division administrative rules and supplemental information (e.g., capitated services that are not included in the nursing facility all-inclusive rate); and

(h) FCHPs and PCOs that contract with FQHCs and RHCs shall negotiate a rate of reimbursement that is not less than the level and amount of payment that the FCHP or PCO would make for the same service furnished by a provider who is not an FQHC nor RHC, consistent with the requirements of BBA 4712(b)(2).

(8) Coverage of services through the OHP Benefit Package of covered services is limited by OAR 410-141-0500 (Excluded Services and Limitations for OHP Clients).

(9) OHP clients enrolled with a PCM receive services on a FFS basis:

(a) PCMs are paid a per client-per month payment to provide PCM Services in accordance with OAR 410-141-0410, PCM Medical Management;

(b) PCMs provide primary care access and management services for preventive services, primary care services, referrals for specialty services, limited inpatient hospital services, and outpatient hospital services. The Division payment for these PCM managed services is contingent upon PCM authorization;

(c) All PCM managed services are covered services that shall be billed directly to the Division in accordance with billing instructions contained in the Division administrative rules and supplemental information;

(d) The Division shall pay at the FFS rate in effect on the date the service is provided subject to the rules and limitations described in the appropriate Division administrative rules and supplemental information.

(10) All OHP members enrolled with a PCO receive inpatient hospital services on a FFS basis:

(a) May receive services directly from any appropriately enrolled provider;

(b) All services shall be billed directly to the Division in accordance with FFS billing instructions contained in the Division administrative rules and supplemental information;

(c) The Division shall pay at the FFS rate in effect on the date the service is provided subject to the rules and limitations described in the appropriate Division administrative rules and supplemental information.

(11) OHP clients not enrolled with a PHP receive services on a FFS basis:

(a) Services may be received directly from any appropriate enrolled provider;

(b) All services shall be billed directly to the Division in accordance with billing instructions contained in the Division administrative rules and supplemental information;

(c) The Division shall pay at the FFS rate in effect on the date the service is provided subject to the rules and limitations described in the appropriate Division administrative rules and supplemental information.

Stat. Auth.: ORS 413.042 & 414.065

Stats. Implemented: ORS 414.065

Hist.: HR 31-1993, f. 10-14-93, cert. ef. 2-1-94; HR 7-1994, f. & cert. ef. 2-1-94; HR 17-1995, f. 9-28-95, cert. ef. 10-1-95; HR 19-1996, f. & cert. ef. 10-1-96; HR 25-1997, f. & cert. ef. 10-1-97; OMAP 21-1998, f. & cert. ef. 7-1-98; OMAP 39-1999, f. & cert. ef. 10-1-99; OMAP 26-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 15-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 52-2001, f. & cert. ef. 10-1-01; OMAP 57-2002, f. & cert. ef. 10-1-02; OMAP 4-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 61-2003, 9-5-03, cert. ef. 10-1-03; OMAP 23-2004(Temp), f. & cert. ef. 3-23-04 thru 8-15-04; OMAP 33-2004, f. 5-26-04, cert. ef. 6-1-04; OMAP 37-2004(Temp), f. 5-27-04 cert. ef. 6-1-04 thru 11-15-04; OMAP 47-2004, f. 7-22-04 cert. ef. 8-1-04; OMAP 27-2005, f. 4-20-05, cert. ef. 5-1-05; OMAP 46-2005, f. 9-9-05, cert. ef. 10-1-05; OMAP 23-2006, f. 6-12-06, cert. ef. 7-1-06; OMAP 53-2006(Temp), f. 12-28-06, cert. ef. 1-1-07 thru 6-29-07; DMAP 9-2007, f. 6-14-07, cert. ef. 6-29-07; DMAP 45-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 16-2010, f. 6-11-10, cert. ef. 7-1-10; DMAP 42-2010, f. 12-28-10, cert. ef. 1-1-11; DMAP 29-2011, f. 10-19-11, cert. ef. 10-20-11; DMAP 48-2011(Temp), f. 12-23-11, cert. ef. 1-1-12 thru 6-25-12; Administrative correction, 8-1-12; DMAP 60-2013, f. & cert. ef. 10-31-13; DMAP 34-2014(Temp), f. 6-25-14, cert. ef. 7-1-14 thru 12-27-14; DMAP 45-2014, f. 7-15-14, cert. ef. 8-1-14

## 410-141-0480

### Oregon Health Plan Benefit Package of Covered Services

(1) Division members are eligible to receive, subject to section (11) of this rule, those treatments for the condition/treatment pairs funded on the Health Evidence Review Commission (HERC) Prioritized List of Health Services adopted under OAR 410-141-0520 when such treatments are medically or dentally appropriate, except that services shall also meet the prudent layperson standard defined in 410-141-0140. Refer to 410-141-0520 for funded line coverage information.

(2) Medical Assistance Benefit Packages follow practice guidelines adopted by the HERC in conjunction with the Prioritized List of Health Services unless otherwise specified in rule.

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(3) Diagnostic services that are necessary and reasonable to diagnose the member's presenting condition are covered services regardless of the placement of the condition on the Prioritized List of Health Services.

(4) Comfort care is a covered service for a member with a terminal illness.

(5) Preventive services promoting health and reducing the risk of disease or illness are covered services for members. These services include, but are not limited to, periodic medical and dental exams based on age, sex, and other risk factors; screening tests; immunizations; and counseling regarding behavioral risk factors (See OAR 410-141-0520 Prioritized List of Health Services).

(6) Ancillary services are covered subject to the service limitations of the OHP program rules when the services are medically or dentally appropriate for the treatment of a covered condition/treatment pair, or the provision of ancillary services will enable the member to retain or attain the capability for independence or self-care.

(7) The provision of SUD services shall comply with Addictions and Mental Health Division (AMH) administrative rules, OAR 415-012-0000 "Standards for Approval/Licensure of Alcohol and Other Drug Abuse Programs," OAR 415-020 "Standards for Outpatient Synthetic Opiate Treatment Programs," OAR 415-050 "Standards for Alcohol Detoxification Centers," OAR 309-018 "Residential Substance Use Disorders and Problem Gambling Treatment and Recovery Services," OAR 309-019 "Outpatient Addictions and Mental Health Services," OAR 309-022 "Intensive Treatment Services for Children and Adolescents and Children's Emergency Safety Intervention Specialist," and the requirements in the SUD subsection of the Statement of Work in the CCO, FCHP, and PCO contracts.

(8) In addition to the coverage available under section (1) of this rule, a member may be eligible to receive, subject to section (11), services for treatments that are below the funded line or not otherwise excluded from coverage:

(a) Services may be provided if it can be shown that:

(A) The OHP member has a funded condition for which documented clinical evidence shows that the funded treatments are not working or are contraindicated; and

(B) Concurrently has a medically related unfunded condition that is causing or exacerbating the funded condition; and

(C) Treating the unfunded medically related condition would significantly improve the outcome of treating the funded condition;

(D) Ancillary services that are excluded and other services that are excluded are not subject to consideration under this rule;

(E) Any unfunded or funded co-morbid conditions or disabilities shall be represented by an ICD-9-CM diagnosis code or when the condition is a mental disorder, represented by DSM-V diagnosis coding to the highest level of axis specificity; and

(F) In order for the treatment to be covered, there shall be a medical determination and finding by the Division for fee-for-service OHP clients or a finding by the Prepaid Health Plan (PHP) for members that the terms of subsection (a)(A)–(C) of this rule have been met based upon the applicable:

- (i) Treating physician opinion;
- (ii) Medical research;
- (iii) Community standards; and
- (iv) Current peer review.

(b) Before denying treatment for an unfunded condition for any member, especially a member with a disability or with a co-morbid condition, providers shall determine whether the member has a funded condition/treatment pair that would entitle the member to treatment under the program, and both the funded and unfunded conditions shall be represented by an ICD-9-CM diagnosis code, or when the condition is a mental disorder, represented by DSM-V diagnosis coding to the highest level of axis specificity.

(9) The Division shall maintain a telephone information line for the purpose of providing assistance to practitioners in determining coverage under the OHP Benefit Package of Covered Services. The telephone information line shall be staffed by registered nurses who shall be available during regular business hours. If an emergency need arises outside of regular business hours, the Division shall make a retrospective determination under this section, provided the Division is notified of the emergency situation during the next business day. If the Division denies a requested service, the Division shall provide written notification and a notice of the right to an administrative hearing to both the OHP member and the treating physician within five working days of making the decision.

(10) If a condition/treatment pair is not on the HERC Prioritized List of Health Services and the Division determines the condition/treatment pair has not been identified by the HERC for inclusion on the list, the Division shall make a coverage decision in consultation with the HERC.

(11) Coverage of services available through the OHP Benefit Package of Covered Services is limited by OAR 410-141-0500 (Excluded Services and Limitations for Oregon Health Plan Clients).

(12) General anesthesia for dental procedures that are medically and dentally appropriate to be performed in a hospital or ambulatory surgical setting may be used only for those members as detailed in OAR 410-123-1490.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.065

Hist.: HR 31-1993, f. 10-14-93, cert. ef. 2-1-94; HR 7-1994, f. & cert. ef. 2-1-94; HR 39-1994, f. 12-30-94, cert. ef. 1-1-95; HR 26-1995, f. 12-29-95, cert. ef. 1-1-96; HR 19-1996, f. & cert. ef. 10-1-96; HR 1-1997(Temp), f. 1-31-97, cert. ef. 2-1-97; HR 12-1997, f. 5-30-97, cert. ef. 6-1-97; HR 15-1997, f. & cert. ef. 7-1-97; HR 26-1997, f. & cert. ef. 10-1-97; OMAP 17-1998(Temp), f. & cert. ef. 5-1-98 thru 9-1-98; OMAP 32-1998, f. & cert. ef. 9-1-98; OMAP 39-1998, f. & cert. ef. 10-1-98; OMAP 39-1999, f. & cert. ef. 10-1-99; OMAP 26-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 53-2001, f. & cert. ef. 10-1-01; OMAP 88-2002, f. 12-24-02, cert. ef. 1-1-03; OMAP 61-2003, 9-5-03, cert. ef. 10-1-03; 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 35-2004, f. 5-26-04 cert. ef. 6-1-04; OMAP 51-2004, f. 9-9-04, cert. ef. 10-1-04; OMAP 27-2005, f. 4-20-05, cert. ef. 5-1-05; OMAP 23-2006, f. 6-12-06, cert. ef. 7-1-06; OMAP 46-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 23-2007, f. 12-11-07 cert. ef. 1-1-08; DMAP 11-2010(Temp), f. & cert. ef. 6-3-10 thru 11-15-10; DMAP 25-2010, f. & cert. ef. 9-1-10; DMAP 45-2014, f. 7-15-14, cert. ef. 8-1-14

## 410-141-0740

### Oregon Health Plan Primary Care Case Manager Quality Assurance System

(1) Primary Care Managers (PCM) shall provide services that are in accordance with accepted medical practices and with accepted professional standards:

(a) PCMs shall establish procedures and protocols for assessing quality of PCM member care:

(A) PCMs shall establish procedures for response to PCCM member complaints as outlined in OAR 410-141-0780, PCM Complaint Procedures;

(B) PCMs shall establish or adopt criteria for adequate medical care for members and shall review care received by the member against these criteria. These criteria shall include those conditions and treatments identified by the Division and the Addictions and Mental Health Division (AMH) sponsored statewide-quality assurance committee as in need of study, review, or improvement;

(C) PCMs may use the services of a local medical society, other professional societies, quality assurance organizations, or professional review organizations approved by the Secretary of the U.S. to assist in reviewing criteria and protocols for the adequate medical care of members.

(b) PCMs shall maintain and improve professional competencies when needed in order to provide quality care to members.

(2) The Division and AMH conducts continuous and periodic reviews of enrollment and disenrollment, service utilization, quality of care, member satisfaction, and member medical outcomes for specific tracer conditions, accessibility, complaints, member rights, and other indicators of quality of care:

(a) The Division and AMH contract with an external medical review organization to monitor the treatment of specific conditions against national standards for treatment of tracer conditions that include, but are not limited to, asthma, anemia, diabetes, hypertension, pelvic inflammatory disease, teen pregnancy, toxemia, hypertension, and diabetes in pregnancy;

(b) The Division and AMH evaluate the management of adult and child preventive services through external medical review and through its research and evaluation program. These services are evaluated using national and state criteria including criteria for mental health and SUD treatment screenings.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.651

Hist.: HR 7-1994, f. & cert. ef. 2-1-94; DMAP 16-2010, f. 6-11-10, cert. ef. 7-1-10; DMAP 45-2014, f. 7-15-14, cert. ef. 8-1-14

## 410-141-3010

### CCO Application, Certification, and Contracting Procedures

(1) The following definitions apply to this rule:

(a) "Applicant" means the entity submitting an application to be certified as a CCO or to enter into or amend a contract for coordinated care services;

(b) "Application" means an entity's written response to a Request for Application (RFA);

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(c) "Award Date" means the date on which the Authority acts on the applications by issuing or denying certification and by awarding or not awarding contracts;

(d) "Certification" means the Authority's determination that an entity meets the criteria in OAR 410-141-3015 and the standards set forth in the RFA for being a CCO through initial certification or recertification;

(e) "Coordinated Care Services" means fully integrated physical health services, Substance Use Disorder (SUD) treatment, and mental health services and shall include dental health services as provided in ORS 414.625(3) no later than July 1, 2014;

(f) "CMS Medicare/Medicaid Alignment Demonstration" means a demonstration proposal by the Authority to CMS that will align and integrate Medicare and Medicaid benefits and financing to the greatest extent feasible for individuals who are eligible for both programs. The Authority and CMS shall jointly establish its timelines and requirements for participation in the demonstration;

(g) "Entity" means a single legal entity capable of entering into a risk contract that covers coordinated care services with the state and conducting the business of a coordinated care organization;

(h) "Request for Applications (RFA)" means the document used for soliciting applications for certification as a CCO, award of or amendment of a CCO services contract, or other objectives as the Authority may determine appropriate for procuring coordinated care services.

(2) The Authority shall establish an application process for entities seeking certification and contracts as CCOs.

(3) The Authority shall use the following RFA processes for CCO certification and contracting:

(a) The Authority shall provide public notice of every RFA on its website. The RFA shall indicate how prospective applicants will be made aware of addenda by posting notice of the RFA on the electronic system for notification to the public of Authority procurement opportunities or, upon request, by mailing notice of the availability of the RFA to persons that have expressed interest in the RFA;

(b) The RFA process begins with a public notice that shall be communicated using the Authority's website. A public notice of an RFA shall identify the certification requirements for the contract, the designated service areas where coordinated care services are requested, and a sample contract;

(c) The RFA may specify that applicants must submit a letter of intent to the Authority within the specified time period. The letter of intent does not commit any applicant to apply. If a letter of intent is required, the Authority may not consider applications from applicants who fail to submit a timely letter of intent except as provided in the RFA;

(d) The RFA may request applicants to appear at a public meeting to provide information about the application;

(e) The RFA will request information from applicants in order to allow the Authority to engage in appropriate state supervision necessary to promote state action immunity under state and federal antitrust laws;

(f) The Authority shall consider only applications that are responsive, completed as described in the RFA, and submitted in the time and manner described in the RFA. The RFA may require submission of the application on its web portal in accordance with OAR 137-047-0330 (Electronic Procurements). If electronic procurement is used, applications shall be accepted only from applicants who accept the terms and conditions for use of the Authority's web portal.

(4) At recertification the Authority may permit a current CCO contractor to submit an abbreviated application that focuses only on additional or different requirements specific to the recertification and new contract or the new addenda or capacity or other purposes within the scope of the RFA.

(5) The Authority shall evaluate applications for certification on the basis of criteria in OAR 410-141-3015, information contained in the RFA, the application, and any additional information that the Authority obtains. Application evaluations shall be based on RFA criteria;

(a) The Authority may enter into negotiation with applicants concerning potential capacity and enrollment in relation to other available or potentially available capacity, the number of potential enrollees within the service area, and other factors identified in the RFA;

(b) The Authority shall notify each applicant that applies for certification of its certification status;

(c) Applicants that meet the RFA criteria shall be certified to contract as a CCO.

(6) Review for certification:

(a) The Authority shall issue certification only to applicants that meet the criteria in OAR 410-141-3015, meet the requirements, and provide the assurances specified in the RFA. The Authority determines whether the

applicant qualifies for certification based on the application and any additional information and investigation that the Authority may require;

(b) The Authority determines an applicant is eligible for certification when the applicant meets the requirements of the RFA including written assurances satisfactory to the Authority that the applicant:

(A) Provides or will provide the coordinated care services in the manner described in the RFA and the Authority's rules;

(B) Is responsible and meets or will meet standards established by the Authority and DCBS for financial reporting and solvency;

(C) Is organized and operated and shall continue to be organized and operated in the manner required by the contract and described in the application; and

(D) Shall comply with any assurances it has given the Authority.

(7) The Authority shall certify CCOs for a period of six years from the date the certification application is approved, unless the Authority certifies a CCO for a shorter period.

(8) The Authority may determine that an applicant is potentially eligible for certification in accordance with section (9). The Authority is not obligated to determine whether an applicant is potentially eligible for certification if, in its discretion, the Authority determines that sufficient applicants eligible for certification are available to attain the Authority's objectives under the RFA.

(9) The Authority may determine that an applicant is potentially eligible for certification if:

(a) The Authority finds that the applicant is reasonably capable of meeting the operational and solvency requirements of the RFA within a specified period of time; and

(b) The applicant enters into discussions with the Authority about areas of qualification that must be met before the applicant is operationally and financially eligible for certification. The Authority shall determine the date and required documentation and written assurances required from the applicant;

(c) If the Authority determines that an applicant potentially eligible for certification cannot become certified within the time announced in the RFA for contract award, the Authority may:

(A) Offer certification at a future date when the applicant demonstrates to the Authority's satisfaction that the applicant is eligible for certification within the scope of the RFA; or

(B) Inform the applicant that it is not eligible for certification.

(10) The Authority may award contracts to certified CCOs for administering the Oregon Integrated and Coordinated Health Care Delivery System.

(11) The Authority shall enter into or renew a contract with a CCO only if the CCO has been certified and the Authority determines that the contract would be within the scope of the RFA and consistent with the purposes and effective administration of the Oregon Integrated and Coordinated Health Care Delivery System that includes, but is not limited to:

(a) The capacity of any existing CCO in the region compared to the capacity of an additional CCO for the number of potential enrollees in the addenda;

(b) The number of CCOs in the region.

(12) The application is the applicant's offer to enter into a contract and is a firm offer for the period specified in the RFA. The Authority's award of the contract constitutes acceptance of the offer and binds the applicant to the contract:

(a) Except to the extent the applicant is authorized to propose certain terms and conditions pursuant to the RFA, an applicant may not make its offer contingent on the Authority's acceptance of any terms or conditions other than those contained in the RFA;

(b) Only an entity that the Authority has certified to contract as a CCO may enter into a contract as a CCO. Certification to contract as a CCO does not assure the CCO that it will be offered a contract;

(c) The Authority may award multiple contracts or make a single award or limited number of awards to all certified or potentially certified applicants in order to meet the Authority's needs including, but not limited to, adequate capacity for the potential enrollees in the service area, maximizing the availability of coordinated care services, and achieving the objectives in the RFA;

(d) Subject to any limitations in the RFA, the Authority may renew a contract for CCO services by amending an existing contract or issuing a replacement contract without issuing a new RFA;

(e) The suspension or termination of a CCO contract issued under an RFA due to noncompliance with contract requirements or by a CCO's vol-

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untary suspension or termination shall also be a suspension or termination of certification.

(13) Disclosure of application contents and release of information:

(a) Except for the letter of intent to apply and the technical application (with the exception of information that has been clearly identified and labeled confidential in the manner specified in the RFA), information may not be disclosed to any applicant or the public until the award date. No information may be given to any applicant or the public relative to its standing with other applicants before the award date except under the following circumstances:

(A) The information in the application may be shared with the Authority, DCBS, CMS, and those individuals involved in the application review and evaluation process; and

(B) Information may be provided by the applicant to the public as part of a public review process.

(b) Application information may be disclosed on the award date (with the exception of information that has been clearly identified and labeled confidential in the manner specified in the RFA) if the Authority determines it meets the disclosure exemption requirements.

(14) CCOs may apply to participate in the CMS Medicare/Medicaid Alignment Demonstration, but participation is not required. This rule does not replace the CMS requirements related to the Medicare/Medicaid Alignment Demonstration, such as the CMS notice of intent to apply and required components for Part D coverage. The RFA provides information about the demonstration requirements. Upon approval of the demonstration by CMS, the Authority shall conduct jointly with CMS the evaluation for certification for the Medicare/Medicaid Alignment Demonstration and the award of three-way contracts between CMS, the state, and applicants who have been certified to contract as a CCO and participate in the demonstration.

(15) The Authority shall interpret and apply this rule to satisfy federal procurement and contracting requirements in addition to state requirements applicable to contracts with CCOs. The Authority must seek and receive federal approval of CCO contracts.

(16) Except where inconsistent with the preceding sections of this rule, the Authority adopts the following Department of Justice (DOJ) Model Public Contract Rules (as in effect on January 1, 2012) to govern RFAs and certification and contracting with CCOs:

(a) OAR 137-046 — General Provisions Related to Public Contracting: 137-046-0100, 137-046-0110, and 137-046-0400 through 137-046-0480;

(b) OAR 137-047 — Public Procurements for Goods or Services: 137-047-0100, 137-047-0260 through 137-047-0670, 137-047-700 to 137-047-0760 (excluding provisions governing judicial review), and 137-047-0800;

(c) In applying the DOJ Model Rules to RFAs under this rule:

(A) An application is a proposal under the DOJ Model Rules;

(B) An RFA is an RFP under the DOJ Model Rules;

(C) Certification as a CCO is pre-qualification under the DOJ Model Rules;

(D) Provisions of the Public Contracting Code referenced in the DOJ Model Rules are considered to be incorporated therein;

(E) Definitions in the DOJ Model Rules govern this rule except where a term is defined in section (1) of this rule.

(17) Judicial review of the Authority's decisions relating to a solicitation protest, certification, or contract award is governed by the Oregon Administrative Procedures Act (APA). The RFA may establish when an Authority decision may be considered a final order for purposes of APA review.

Stat. Auth.: ORS 413.042, 414.615, 414.625, 414.635 & 414.651

Stats. Implemented: ORS 414.610 - 414.685

Hist.: DMAP 11-2012(Temp), f. & cert. ef. 3-16-12 thru 9-11-12; DMAP 37-2012, f. & cert. ef. 8-1-12; DMAP 45-2014, f. 7-15-14, cert. ef. 8-1-14

## 410-141-3015

### Certification Criteria for Coordinated Care Organizations

(1) Applicants shall submit applications to the Authority describing their capacity and plans for meeting the goals and requirements established for the Oregon Integrated and Coordinated Health Care Delivery System including being prepared to enroll all eligible individuals within the CCO's proposed service area. The Authority shall use the RFA procurement process described in OAR 410-141-3010.

(2) In addition to the requirements for CCOs expressed in the laws establishing Health System Transformation, the Authority interprets the qualifications and expectations for CCO certification within the context of the Oregon Health Policy Board's report, Coordinated Care Organizations

Implementation Proposal: HB 3650 Health System Transformation (Jan. 24, 2012).

(3) Applicants shall describe their demonstrated experience and capacity for:

(a) Managing financial risk and establishing financial reserves;

(b) Meeting the following minimum financial requirements:

(A) Maintaining restricted reserves of \$250,000 plus an amount equal to 50 percent of the entity's total actual or projected liabilities above \$250,000;

(B) Maintaining a net worth in an amount equal to at least 5 percent of the average combined revenue in the prior two quarters of the participating health care entities.

(c) Operating within a fixed global budget;

(d) Developing and implementing alternative payment methodologies that are based on health care quality and improved health outcomes;

(e) Coordinating the delivery of physical health care, mental health and Substance Use Disorder (SUD) services, oral health care, and covered long-term care services;

(f) Engaging community members and health care providers in improving the health of the community and addressing regional, cultural, socioeconomic, and racial disparities in health care that exist among the entity's enrollees and in the entity's community.

(4) In selecting one or more CCOs to serve a geographic area, the Authority shall:

(a) For members and potential members, optimize access to care and choice of providers;

(b) For providers, optimize choice in contracting with CCOs; and

(c) Allow more than one CCO to serve the geographic area if necessary to optimize access and choice under this subsection.

(5) Evaluation of CCO applications shall account for the developmental nature of the CCO system. The Authority recognizes that CCOs and partner organizations will need time to develop capacity, relationships, systems, and experience to fully realize the goals envisioned by the Oregon Integrated and Coordinated Health Care Delivery System. The Authority shall thoroughly review how the application describes community involvement in the governance of the CCO and the CCO's strategic plan for developing its community health assessment and community health improvement plan:

(a) In all cases, CCOs shall have plans in place to meet the criteria laid out in these rules and the application process and to make sufficient progress in implementing plans and realizing the goals established in contract;

(b) Each criterion will be listed followed by the elements that shall be addressed during the initial certification described in this rule without limiting the information that is requested in the RFA concerning these criteria.

(6) Each CCO shall have a governance structure that meets the requirements of ORS 414.625. The applicant shall:

(a) Clearly describe how it meets governance structure criteria from ORS 414.625, how the governance structure makeup reflects community needs and supports the goals of health care transformation, how the criteria is used to select governance structure members, and how it will assure transparency in governance;

(b) Identify key leaders who are responsible for successful implementation and sustainable operation of the CCO;

(c) Describe how its governance structure will reflect the needs of members with severe and persistent mental illnesses and members receiving DHS Medicaid-funded, long-term care services and supports.

(7) Each CCO shall convene a community advisory council (CAC) that meets the requirements of ORS 414.625. The applicant shall clearly describe how it meets the requirements for selection and implementation of a CAC consistent with ORS 414.625, how the CAC will be administered to achieve the goals of community involvement, and the development, adoption, and updating of the community health assessment and community health improvement plan.

(8) CCOs shall partner with their local public health authority, hospital system, type B AAA, APD field office, and local mental health authority to develop a shared community health assessment that includes a focus on health disparities in the community:

(a) Since community health assessments will evolve over time as relationships develop and CCOs learn what information is most useful, initial CCO applicants may not have time to conduct a comprehensive community assessment before becoming certified;

(b) The applicant shall describe how it will develop its health assessment, meaningfully and systematically engaging representatives of critical populations and community stakeholders and its community advisory

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council to create a health improvement plan for addressing community need that builds on community resources and skills and emphasizes innovation.

(9) The CCO shall describe its strategy to adopt and implement a community health improvement plan consistent with OAR 410-141-3145.

(10) Dental care organizations: On or before July 1, 2014, each CCO shall have a contractual relationship with any DCO in its service area.

(11) CCOs shall have agreements in place with publicly funded providers to allow payment for point-of-contact services including immunizations, sexually transmitted diseases and other communicable diseases, family planning, and HIV/AIDS prevention services. Applicants shall confirm that these agreements have been developed unless good cause can be shown:

(a) CCOs shall also have agreements in place with the local mental health authority consistent with ORS 414.153. Applicants shall confirm that these agreements have been developed unless good cause can be shown;

(b) The Authority shall review CCO applications to ensure that statutory requirements regarding county agreements are met unless good cause is shown why an agreement is not feasible.

(12) CCOs shall provide integrated, person-centered care and services designed to provide choice, independence, and dignity:

(a) The applicant shall describe its strategy to assure that each member receives integrated, person-centered care and services designed to provide choice, independence, and dignity;

(b) The applicant shall describe its strategy for providing members the right care at the right place and the right time and to integrate and coordinate care across the delivery system.

(13) CCOs shall develop mechanisms to monitor and protect against underutilization of services and inappropriate denials, provide access to qualified advocates, and promote education and engagement to help members be active partners in their own care. Applicants shall:

(a) Describe their planned or established policies and procedures that protect member rights including access to qualified peer wellness specialists, personal health navigators, and qualified community health workers where appropriate;

(b) Describe planned or established mechanisms for a complaint, grievance, and appeals resolution process, including how that process shall be communicated to members and providers.

(14) CCOs shall operate in a manner that encourages patient engagement, activation, and accountability for the member's own health. Applicants shall describe how they plan to:

(a) Actively engage members in the design and, where applicable, implementation of their treatment and care plans;

(b) Ensure that member choices are reflected in the development of treatment plans, and member dignity is respected.

(15) CCOs shall assure that members have a choice of providers within the CCO's network, including providers of culturally and linguistically appropriate services and their providers participating in the CCO and shall:

(a) Work together to develop best practices for care and service delivery to reduce waste and improve health and well-being of all members;

(b) Are educated about the integrated approach and how to access and communicate within the integrated system about a member's treatment plan and health history;

(c) Emphasize prevention, healthy lifestyle choices, evidence-based practices, shared decision-making, and communication;

(d) Are permitted to participate in the networks of multiple CCOs;

(e) Include providers of specialty care;

(f) Are selected by the CCO using universal application and credentialing procedures, objective quality information, and are removed if the providers fail to meet objective quality standards.

(g) Describe how they will work with their providers to develop the partnerships necessary to allow for access to and coordination with medical, mental health and Substance Use Disorder (SUD) service providers, and dental care when the CCO includes a dental care organization and facilitate access to community social and support services including DHS Medicaid-funded long-term care services, mental health crisis services, and culturally and linguistically appropriate services;

(h) Describe their planned or established tools for provider use to assist in the education of members about care coordination and the responsibilities of both parties in the process of communication.

(16) CCOs shall assure that each member has a consistent and stable relationship with a care team that is responsible for providing preventive and primary care and for comprehensive care management in all settings. The applicant shall demonstrate how it will support the flow of information,

identify a lead provider or care team to confer with all providers responsible for a member's care, and use a standardized patient follow-up approach.

(17) CCOs shall address the supportive and therapeutic needs of each member in a holistic fashion using patient-centered primary care homes and individualized care:

(a) Applicants shall describe their model of care or other models that support patient-centered primary care, adhere to ORS 414.625 requirements regarding individualized care plans particularly for members with intensive care coordination needs, and screen for all other issues including mental health;

(b) Applicants shall describe how its implementation of individualized care plans reflects member or family and caregiver preferences and goals to ensure engagement and satisfaction.

(18) CCOs shall assure that members receive comprehensive transitional health care including appropriate follow-up care when entering or leaving an acute care facility or long-term care setting. Applicants shall:

(a) Describe their strategy for improved transitions in care so that members receive comprehensive transitional care, and members' experience of care and outcomes are improved;

(b) Demonstrate how hospitals and specialty services will be accountable to achieve successful transitions of care and establish service agreements that include the role of patient-centered primary care homes;

(c) Describe their arrangements, including memorandum of understanding, with Type B Area Agencies on Aging or the Department's offices of Aging and Persons with Disabilities concerning care coordination and transition strategies for members.

(19) CCOs shall provide members with assistance in navigating the health care delivery system and accessing community and social support services and statewide resources including the use of certified or qualified health care interpreters, community health workers, and personal health navigators. The applicant shall describe its planned policies for informing members about access to personal health navigators, peer wellness specialists where appropriate, and community health workers.

(20) Services and supports shall be geographically located as close to where members reside as possible and are, when available, offered in non-traditional settings that are accessible to families, diverse communities, and underserved populations. Applicants shall describe:

(a) Delivery system elements that respond to member needs for access to coordinated care services and supports;

(b) Planned or established policies for the delivery of coordinated health care services for members in long-term care settings;

(c) Planned or established policies for the delivery of coordinated health care services for members in residential treatment settings or long term psychiatric care settings.

(21) Each CCO shall prioritize working with members who have high health care needs, multiple chronic conditions, mental illness, or Substance Use Disorder (SUD) services including members with severe and persistent mental illness covered under the State's 1915(i) State Plan Amendment. The CCO shall involve those members in accessing and managing appropriate preventive, health, remedial, and supportive care and services to reduce the use of avoidable emergency department visits and hospital admissions. The applicant shall describe how it will:

(a) Use individualized care plans to address the supportive and therapeutic needs of each member, particularly those with intensive care coordination needs;

(b) Reflect member or family and caregiver preferences and goals to ensure engagement and satisfaction.

(22) Each CCO shall participate in the learning collaborative described in ORS 442.210. Applicants shall confirm their intent to participate.

(23) Each CCO shall implement to the maximum extent feasible patient-centered primary care homes including developing capacity for services in settings that are accessible to families, diverse communities, and underserved populations:

(a) The applicant shall describe its plan to develop and expand capacity to use patient-centered primary care homes to ensure that members receive integrated, person-centered care and services and that members are fully informed partners in transitioning to this model of care;

(b) The applicant shall require its other health and services providers to communicate and coordinate care with patient-centered primary care homes in a timely manner using health information technology.

(24) CCOs' health care services shall focus on achieving health equity and eliminating health disparities. Applicants shall:

(a) Describe their strategy for ensuring health equity (including interpretation and cultural competence) and elimination of avoidable gaps in

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health care quality and outcomes, as measured by gender, race, ethnicity, language, disability, sexual orientation, age, mental health and addictions status, geography, and other cultural and socioeconomic factors;

(b) Engage in a process that identifies health disparities associated with race, ethnicity, language, health literacy, age, disability (including mental illness and substance use disorders), gender, sexual orientation, geography, or other factors through community health assessment;

(c) Collect and maintain race, ethnicity, and primary language data for all members on an ongoing basis in accordance with standards jointly established by the Authority and the Division.

(25) CCOs are encouraged to use alternative payment methodologies consistent with ORS 414.653. The applicant shall describe its plan to move toward and begin to implement alternative payment methods alone or in combination with delivery system changes to achieve better care, controlled costs, and better health for members.

(26) Each CCO shall use health information technology (HIT) to link services and care providers across the continuum of care to the greatest extent practicable. The applicant shall describe:

(a) Its initial and anticipated levels of electronic health record adoption and health information exchange infrastructure and capacity for collecting and sharing patient information electronically and its HIT improvement plan for meeting transformation expectations;

(b) Its plan to ensure that each network provider participates in a health information organization (HIO) or is registered with a statewide or local direct-enabled health information service provider.

(27) Each CCO shall report on outcome and quality measures identified by the Authority under ORS 414.638 and participate in the All Payer All Claims (APAC) data reporting system. The applicant shall provide assurances that:

(a) It has the capacity to report and demonstrate an acceptable level of performance with respect to Authority-identified metrics;

(b) It will submit APAC data in a timely manner according to program specifications.

(28) Each CCO shall be transparent in reporting progress and outcomes. Applicants shall:

(a) Describe how it will assure transparency in governance;

(b) Agree to provide timely access to certain financial, outcomes, quality, and efficiency metrics that will be transparent and publicly reported and available on the Internet.

(29) Each CCO shall use best practices in the management of finances, contracts, claims processing, payment functions, and provider networks. The applicant shall describe:

(a) Its planned or established policies for ensuring best practices in areas identified by ORS 414.625;

(b) Whether the CCO will use a clinical advisory panel (CAP) or other means to ensure clinical best practices;

(c) Plans for an internal quality improvement committee that develops and operates under an annual quality strategy and work plan that incorporates implementation of system improvements and an internal utilization review oversight committee that monitors utilization against practice guidelines and treatment planning protocols and policies.

(30) Each CCO shall demonstrate sound fiscal practices and financial solvency and shall possess and maintain resources needed to meet their obligations:

(a) Initially, the financial applicant shall submit required financial information that allows the DCBS Insurance Division on behalf of the Authority to confirm financial solvency and assess fiscal soundness;

(b) The applicant shall provide information relating to assets and financial and risk management capabilities.

(31) Each CCO may provide coordinated care services within a global budget. Applicants shall submit budget cost information consistent with its proposal for providing coordinated care services within the global budget.

(32) A CCO shall operate, administer, and provide for integrated and coordinated care services within the requirements of the medical assistance program in accordance with the terms of the contract and rule. The applicant shall provide assurances about compliance with requirements applicable to the administration of the medical assistance program.

(33) Each CCO shall provide covered Medicaid services, other than DHS Medicaid-funded long-term care services, to members who are dually eligible for Medicare and Medicaid. The applicant may participate in the CMS Medicare/Medicaid Alignment Demonstration if the Authority obtains necessary federal approvals.

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 45-2014, f. 7-15-14, cert. ef. 8-1-14

## 410-141-3050

### CCO Enrollment for Children Receiving Health Services

Pursuant to OAR 410-141-3060, the Authority or Oregon Youth Authority (OYA) shall select CCOs for a child receiving services in an area where a CCO is available. If a CCO is not available in an area, the Authority shall enroll the child in accordance with 410-141-0050.

(1) The Authority shall to the maximum extent possible ensure that all children are enrolled in CCOs at the next available enrollment date following eligibility determination, redetermination, or upon review by the Authority unless the Authority authorizes disenrollment from a CCO:

(a) Except as provided in OAR 410-141-3060 (Coordinated Care Enrollment Requirements), 410-141-3080 (Disenrollment from Coordinated Care Health Plans), or ORS 414.631(2), children are not exempt from mandatory enrollment in a CCO on the basis of third party resources (TPR) coverage;

(b) The Authority shall review decisions to use fee-for-service (FFS) open card for a child if the child's circumstances change and at the time of redetermination consider whether the Authority shall enroll the child in a CCO.

(2) When a child is transferred from one CCO to another CCO or from FFS or a PHP to a CCO, the CCO shall facilitate coordination of care consistent with OAR 410-141-3160:

(a) CCOs shall work closely with the Authority to ensure continuous CCO enrollment for children;

(b) If the Authority determines that it should disenroll a child from a CCO, the CCO shall continue to provide health services until the Authority's established disenrollment date to provide for an adequate transition to the next CCO.

(3) When a child experiences a change of placement that may be permanent or temporary, the Authority shall verify the address change information to determine whether the child no longer resides in the CCO's service area:

(a) A temporary absence as a result of a temporary placement out of the CCO's service area does not represent a change of residence if the Authority determines that the child is reasonably likely to return to the CCO's service area at the end of the temporary placement;

(b) A CAF child receiving behavioral rehabilitation services (BRS) is considered a temporary placement;

(c) Children in OYA custody enroll with the CCO serving the geographic area of placement. OYA representatives may request a service area exemption (SAE) to maintain CCO coverage on a placement they consider temporary.

(4) If the Authority enrolls the child in a CCO on the same day the child is admitted to psychiatric residential treatment services (PRTS), the CCO shall pay for covered health services during that placement even if the location of the facility is outside the CCO's service area:

(a) The child is presumed to continue to be enrolled in the CCO with which the child was most recently enrolled. The Authority considers an admission to a PRTS facility a temporary placement for purposes of CCO enrollment;

(b) Any address change associated with the placement in the PRTS facility is not a change of residence for purposes of CCO enrollment and may not be a basis for disenrollment from the CCO unless the provisions in OAR chapter 410, division 141 apply;

(c) If the Authority determines that a child was disenrolled for reasons not consistent with these rules, the Authority shall re-enroll the child with the appropriate CCO and assign an enrollment date that provides for continuous coverage with the appropriate CCO. If the child was enrolled in a different CCO in error, the Authority shall disenroll the child from that CCO and recoup the CCO payments.

(5) Except for OAR 410-141-3060 and 410-141-3080, if a child is enrolled in a CCO after the first day of an admission to PRTS, the enrollment effective date shall be immediately upon discharge.

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 45-2014, f. 7-15-14, cert. ef. 8-1-14

## 410-141-3120

### Operations and Provision of Health Services

(1) CCOs shall establish, maintain, and operate with a governance structure and community advisory council that is consistent with the requirements of ORS 414.625 and applicable health system transformation laws.

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(2) At a minimum, CCOs shall provide medically appropriate health services including flexible services within the scope of the member's benefit package of health services in accordance with the Prioritized List of Health Services and the terms of the contract.

(3) CCOs shall select providers using universal application and credentialing procedures and objective quality information. CCOs shall take steps to remove providers from their provider network if they fail to meet objective quality standards:

(a) CCOs shall ensure that all participating providers providing coordinated care services to members are credentialed upon initial contract with the CCO and recredentialed no less frequently than every three years. The credentialing and recredentialing process shall include review of any information in the National Practitioners Databank. CCOs shall accept both the Oregon Practitioner Credentialing Application and the Oregon Practitioner Recredentialing Application;

(b) CCOs shall screen their providers to be in compliance with 42 CFR 455 Subpart E (42 CFR 455.410 through 42 CFR 455.470) and retain all resulting documentation for audit purposes;

(c) CCOs may elect to contract for or to delegate responsibility for the credentialing and screening processes; however, CCOs shall be responsible for the following activities including oversight of the following processes regardless of whether the activities are provided directly, contracted, or delegated:

(A) Ensuring that coordinated care services are provided within the scope of license or certification of the participating provider or facility and within the scope of the participating provider's contracted services. They shall ensure participating providers are appropriately supervised according to their scope of practice;

(B) Providing training for CCO staff and participating providers and their staff regarding the delivery of coordinated care services, applicable administrative rules, and the CCOs administrative policies.

(d) The CCO shall provide accurate and timely information to the Authority about:

(A) License or certification expiration and renewal dates;

(B) Whether a provider's license or certification is expired or not renewed or is subject to licensing termination, suspension, or certification sanction;

(C) If a CCO knows or has reason to know that a provider has been convicted of a felony or misdemeanor related to a crime or violation of federal or state laws under Medicare, Medicaid, or Title XIX (including a plea of "nolo contendere").

(e) CCOs may not refer members to or use providers that:

(A) Have been terminated from the Division;

(B) Have been excluded as a Medicaid provider by another state;

(C) Have been excluded as Medicare/Medicaid providers by CMS; or

(D) Are subject to exclusion for any lawful conviction by a court for which the provider could be excluded under 42 CFR 1001.101.

(f) CCOs may not accept billings for services to members provided after the date of the provider's exclusion, conviction, or termination. CCOs shall recoup any monies paid for services to members provided after the date of the provider's exclusion, conviction, or termination;

(g) CCOs shall require each atypical provider to be enrolled with the Authority and shall obtain and use registered National Provider Identifiers (NPIs) and taxonomy codes reported to the Authority in the Provider Capacity Report for purposes of encounter data submission prior to submitting encounter data in connection with services by the provider. CCOs shall require each qualified provider to have and use an NPI as enumerated by the National Plan and Provider Enumeration System (NPPES);

(h) The provider enrollment request (for encounter purposes) and credentialing documents require the disclosure of taxpayer identification numbers. The Authority shall use taxpayer identification numbers for the administration of this program including provider enrollment, internal verification, and administrative purposes for the medical assistance program for administration of tax laws. The Authority may use taxpayer identification numbers to confirm whether the individual or entity is subject to exclusion from participation in the medical assistance program. Taxpayer identification number includes Employer Identification Number (EIN), Social Security Number (SSN), and Individual Tax Identification Number (ITIN) used to identify the individual or entity on the enrollment request form or disclosure statement. Disclosure of all tax identification numbers for these purposes is mandatory. Failure to submit the requested taxpayer identification numbers may result in denial of enrollment as a provider and denial of a provider number for encounter purposes or denial of continued enrollment as a provider and deactivation of all provider numbers used by the provider for encounters.

(4) A CCO may not discriminate with respect to participation in the CCO against any health care provider who is acting within the scope of the provider's license or certification under applicable state law on the basis of that license or certification. If a CCO declines to include individual or groups of providers in its network, it shall give the affected providers written notice of the reason for its decision. This rule may not be construed to:

(a) Require that a CCO contract with any health care provider willing to abide by the terms and conditions for participation established by the CCO; or

(b) Preclude the CCO from establishing varying reimbursement rates based on quality or performance measures. For purposes of this section, quality and performance measures include all factors that advance the goals of health system transformation including:

(A) Factors designed to maintain quality of services and control costs and are consistent with its responsibilities to members; or

(B) Factors that add value to the service provided including, but not limited to, expertise, experience, accessibility, or cultural competence.

(c) The requirements in subsection (b) do not apply to reimbursement rate variations between providers with the same license or certification or between specialists and non-specialty providers.

(5) A CCO shall establish an internal review process for a provider aggrieved by a decision under section (4) of this rule including an alternative dispute resolution or peer review process. An aggrieved provider may appeal the determination of the internal review to the Authority.

(6) To resolve appeals made to the Authority under sections (4) and (5) of this rule, the Authority shall provide administrative review of the provider's appeal using the administrative review process established in OAR 410-120-1580. The Authority shall invite the aggrieved provider and the CCO to participate in the administrative review. In making a determination of whether there has been discrimination, the Authority shall consider the CCO's:

(a) Network adequacy;

(b) Provider types and qualifications;

(c) Provider disciplines; and

(d) Provider reimbursement rates.

(7) A prevailing party in an appeal under sections (4) through (6) of this rule shall be awarded the costs of the appeal.

Stat. Auth.: ORS 413.042, 414.615, 414.625, 414.635 & 414.651

Stats. Implemented: ORS 414.610 - 414.685

Hist.: DMAP 20-2012(Temp), f. & cert. ef. 3-30-12 thru 9-25-12; DMAP 37-2012, f. & cert. ef. 8-1-12; DMAP 45-2014, f. 7-15-14, cert. ef. 8-1-14

## 410-141-3145

### Community Health Assessment and Community Health Improvement Plans

(1) Pursuant to ORS 414.627 to the extent practicable, CCOs shall partner with their local public health authority, local mental health authority, and hospital systems to develop a shared Community Health Assessment (CHA) process including conducting the assessment and development of the resulting Community Health Improvement Plan (CHP).

(2) CCOs shall work with the Authority to identify the components of the CHA. CCOs are encouraged to partner with their local public health authority, hospital system, type B Area Agency on Aging, APD field office and local mental health authority, the Early Learning Council, the Youth Development Council, and school health providers in the region using existing resources when available and avoiding duplication where practicable.

(3) In developing and maintaining a health assessment, CCOs shall meaningfully and systematically engage representatives of critical populations and community stakeholders to create a plan for addressing community health needs that build on community resources and skills and emphasize innovation including, but not limited to, the following:

(a) Emphasis on disproportionate, unmet, health-related need;

(b) Emphasis on primary prevention;

(c) Building a seamless continuum of care;

(d) Building community capacity;

(e) Emphasis on collaborative governance of community benefit.

(4) The CCO requirements for conducting a CHA and CHP will be met for purposes of ORS 414.627 if they substantially meet the community health needs assessment requirement of the federal Patient Protection and Affordable Care Act, 2010 Section 9007, and the Public Health Accreditation Board CHA and CHP requirements for local health departments and the AAA and local mental health authority in the process.

(5) The CCO's CAC shall oversee the CHA and adopt a plan to serve as a strategic population health and health care system service plan for the

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community served by the CCO. The Council shall annually publish a report on the progress of the CHP.

(6) The CHP adopted by the Council shall describe the scope of the activities, services, and responsibilities that the CCO shall consider upon implementation. The activities, services, and responsibilities defined in the CHP may include, but are not limited to:

(a) Analysis and development of public and private resources, capacities, and metrics based on ongoing community health assessment activities and population health priorities;

(b) Health policy;

(c) System design;

(d) Outcome and quality improvement;

(e) Integration of service delivery;

(f) Workforce development; and

(g) Public Health Accreditation Board standards for CHPs.

(7) CCOs and their participating providers shall work together to develop best practices of culturally and linguistically appropriate care and service delivery to eliminate health disparities and improve member health and well-being.

(8) CCOs and their CAC shall collaborate with the Authority's Office of Equity and Inclusion to develop meaningful baseline data on health disparities. CCOs shall include in the CHA identification and prioritization of health disparities among CCOs' diverse communities, including those defined by race, ethnicity, language, health literacy, age, disability, gender, sexual orientation, behavioral health status, geography, or other factors in their service areas such as type of living setting including, but not limited to, home independent support living, adult foster home, or homeless. CCOs shall collect and maintain data on race, ethnicity, and primary language for all members on an ongoing basis in accordance with standards established by the Authority. CCOs shall also include representatives of populations experiencing health disparities in CHA and CHP prioritization. CCOs shall track and report on any quality measure by these demographic factors and shall develop, implement, and evaluate strategies to improve health equity among members. CCOs shall make this information available by posting on the web.

(9) To the extent practicable, CCOs shall:

(a) Base the CHP on research including research into adverse childhood experiences;

(b) Evaluate the adequacy of the existing school-based health center (SBHC) network to meet the specific pediatric and adolescent health care needs in the community and make recommendations to improve the SBHC system;

(c) Improve the integration of all services provided to meet the needs of children, adolescents, and families;

(d) Address primary care, behavioral and oral health, promotion of health and prevention, and early intervention in the treatment of children and adolescents;

(e) With the development of its CHP SBHCs, school nurses, school mental health providers, and individuals representing child and adolescent health services shall be included.

(10) CCOs shall develop and review and update its CHA and plan at least every five years to ensure the provision of all medically appropriate covered coordinated care services including urgent care and emergency services, preventive, community support, and ancillary services in those categories of services included in CCO contracts or agreements with the Authority.

(11) CCOs shall communicate these policies and procedures to providers, regularly monitor providers' compliance, and take any corrective action necessary to ensure compliance. CCOs shall document all monitoring and corrective action activities.

(12) If there is more than one CCO in a community, the CCOs and their community partners may work together to develop one shared CHA and one shared CHP.

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 45-2014, f. 7-15-14, cert. ef. 8-1-14

## 410-141-3200

### Outcome and Quality Measures

(1) CCOs shall report to the Authority its health promotion and disease prevention activities, national accreditation organization results, and HEDIS measures as required by DCBS in OAR 836-053-1000. A copy of the reports may be provided to the Authority's Performance Improvement Coordinator concurrent with any submission to DCBS

(2) As required by Health System Transformation, CCOs shall be accountable for performance on outcomes, quality, and efficiency measures incorporated into the CCO's contract with the Authority. The measures are adopted by the Metrics and Scoring Committee using a public process; information can be requested from the Authority or viewed online at <http://www.oregon.gov/oha/Pages/metric.aspx>.

(3) CCOs shall address objective outcomes, quality measures, and benchmarks for ambulatory care, inpatient care, behavioral health treatment, oral health care (to the extent that dental services are the responsibility of a CCO under an agreement with a DCO), and all other health services provided by or under the responsibility of the CCO as specified in the CCO's contract with the Authority.

(4) CCOs shall maintain an effective process for monitoring, evaluating, and improving the access, quality, and appropriateness of services provided to members consistent with the needs and priorities identified in the CCO's community health assessment, community health improvement plan, and the standards in the CCO's contract. CCOs shall have in effect mechanisms to:

(a) Detect both underutilization and overutilization of services;

(b) Evaluate performance and customer satisfaction;

(c) Evaluate grievance, appeals, and contested case hearings consistent with OAR 410-141-3260; and

(d) Assess the quality and appropriateness of coordinated care services provided to members who are aged, blind, or disabled who have high health care needs, multiple chronic conditions, mental illness, or Substance Use Disorder (SUD) services; who received Medicaid funded long-term care benefits; or who are children receiving CAF (Child Welfare) or OYA services.

(5) CCOs shall implement policies and procedures that assure it will collect timely data including health disparities and other data required by rule or contract that will allow the CCO to conduct and report on its outcome and quality measures and report its performance. CCOs shall submit to the Authority the CCO's annual written evaluation of outcome and quality measures established for the CCO or other reports as the Authority may require in response to the measures adopted by the Metrics and Scoring Committee.

(6) CCOs shall adopt practice guidelines consistent with 42 CFR 438.236 that address physical health care, behavioral health treatment, or dental care concerns identified by members or their representatives and to implement changes that have a favorable impact on health outcomes and member satisfaction in consultation with its community advisory council or clinical review panel.

(7) CCOs shall be accountable for both core and transformational measures of quality and outcomes:

(a) Core measures will be triple-aim oriented measures that gauge CCO performance against key expectations for care coordination, consumer satisfaction, quality, and outcomes. The measures will be uniform across CCOs and shall encompass the range of services included in CCO global budgets (e.g., behavioral health, hospital care, women's health);

(b) Transformational metrics shall assess CCO progress toward the broad goals of health systems transformation and require systems transitions and experimentation in effective use. This subset may include newer kinds of indicators (for which CCOs have less measurement experience) or indicators that entail collaboration with other care partners.

(8) CCOs shall provide the required data to the All Payer All Claims data system established in ORS 442.464 and 442.466.

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 45-2014, f. 7-15-14, cert. ef. 8-1-14

## 410-141-3270

### Coordinated Care Organization Marketing Requirements

(1) For the purposes of this rule, the following definitions apply:

(a) "Cold-call Marketing" means any unsolicited personal contact with a potential member for the purpose of marketing by the CCO.

(b) "Marketing" means any communication from a CCO to a potential member who is not enrolled in the CCO that can reasonably be interpreted as intended to compel or entice the potential member to enroll in that particular CCO.

(c) "Marketing Materials" means materials that are produced in any medium by or on behalf of a CCO and that can reasonably be interpreted as intended to market to potential members.

(d) "Outreach" means any communication from a CCO to any audience that cannot reasonably be interpreted as intended to compel or entice a potential member to enroll in a particular CCO. Outreach activities

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include, but are not limited to, the act of raising the awareness of the CCO, the CCO's subcontractors and partners, and the CCO contractually required programs and services; and the promotion of healthful behaviors, health education and health related events.

(e) "Outreach Materials" means materials that are produced in any medium, by or on behalf of a CCO that cannot reasonably be interpreted as intended to compel or entice a potential member to enroll in a particular CCO.

(f) "Potential Member" means a person who meets the eligibility requirements to enroll in the Oregon Health Plan but has not yet enrolled with a specific CCO.

(2) CCOs shall comply with 42 CFR 438.10, 438.100 and 438.104 to ensure that before enrolling OHP clients, the CCO provides accurate oral and written information that potential members need to make an informed decision on whether to enroll in that CCO. CCOs shall distribute the materials to its entire service area as indicated in its CCO contract. The CCOs may not:

(a) Distribute any marketing materials without first obtaining state approval;

(b) Seek to compel or entice enrollment in conjunction with the sale of or offering of any private insurance; and

(c) Directly or indirectly engage in door to door, telephone, or cold-call marketing activities.

(3) The following communications are expressly permitted:

(a) The creation of name recognition and communication methodologies may include, but are not limited to, brochures, pamphlets, newsletters, posters, fliers, websites, bus wraps, bill boards, web banners, health fairs, or health related events.

(b) A CCO or its subcontractor's communications that express participation in or support for a CCO by its founding organizations or its subcontractors may not constitute an attempt to compel or entice a client's enrollment.

(4) CCOs shall update plan access information with the Authority on a monthly basis for use in updating the availability charts. The Authority shall confirm information before posting.

(5) CCOs have sole accountability for producing or distributing materials following Authority approval.

(6) CCOs shall comply with the Authority marketing materials submission guidelines. CCOs shall participate in development of guidelines with the Authority through a transparent public process, including stakeholder input. The guidelines include, but are not limited to:

(a) A list of communication or outreach materials subject to review by the Authority;

(b) A clear explanation of the Authority's process for review and approval of marketing materials;

(c) A process for appeals of the Authority's edits or denials;

(d) A marketing materials submission form to ensure compliance with CCO marketing rules; and

(e) An update of plan availability information submitted to the Authority on a monthly basis for review and posting.

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 45-2014, f. 7-15-14, cert. ef. 8-1-14

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**Rule Caption:** Amending Prior Authorization Guide — March 27, 2014 DUR/P&T Action

**Adm. Order No.:** DMAP 46-2014(Temp)

**Filed with Sec. of State:** 7-15-2014

**Certified to be Effective:** 7-15-14 thru 1-11-15

**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:

410-121-0040:

Central Nervous (CNS) Sedatives — Non Benzodiazepines — updated criteria

Central Nervous (CNS) Sedatives — Quantity Limit — updated criteria

Central Nervous (CNS) Sedatives — Therapy duplication — updated criteria

Hepatitis B Antivirals - updated criteria

Ivacaftor (Kalydeco®) — updated criteria

Multi-Vitamins and Antioxidant Multivitamin Combinations — new criteria (effective August 1, 2014)

**Rules Coordinator:** Sandy Cafourek—(503) 945-6430

## 410-121-0040

### Prior Authorization Required for Drugs and Products

(1) Prescribing practitioners are responsible for obtaining prior authorization (PA) for the drugs and categories of drugs requiring PA in this rule, using the procedures required 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 as described in this rule, are subject to the following requirements for coverage:

(a) Each drug must 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 shall not be covered unless there is a comorbid condition for which coverage would be extended. The use of the medication must meet corresponding treatment guidelines, be included within the client's benefit package of covered services, and not be otherwise excluded or limited;

(b) Each drug must 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 Oregon Health Authority (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 guide (PA criteria guide) dated July 8, 2014, incorporated in rule by reference and found on our website at: <http://www.dhs.state.or.us/policy/healthplan/guides/pharmacy/clinical.html>.

(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 (see OAR 410-121-0100 for a description of the DUR program). The drugs and categories of drugs for which the Authority requires PA for this purpose are found in the Prior Authorization Approval 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 is required for brand name drugs that have two or more generically equivalent products available and that are NOT determined Narrow Therapeutic Index drugs by the Oregon DUR/P&T Committee:

(a) Immunosuppressant drugs used in connection with an organ transplant must 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 must notify the department of patent expiration within 30 days of patent expiration for (5)(a) to apply;

(c) Criteria for approval are:

(A) If criteria established in subsection (3) or (4) of this rule applies, follow that criteria;

(B) If (6)(A) does not apply, the prescribing practitioner must 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 is required 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

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(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 409.110, 413.042, 414.065, 414.325, 414.334

Stats. Implemented: ORS 414.065

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

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**Rule Caption:** Amending Preferred Drug List— March 27, 2014 DUR/P&T Action

**Adm. Order No.:** DMAP 47-2014(Temp)

**Filed with Sec. of State:** 7-15-2014

**Certified to be Effective:** 7-15-14 thru 1-11-15

**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:

Testosterone (Androgel®) Pump;

Calcitriol;

Calcium Carbonate;

Calcium Carbonate / Vitamin D3;

Cholecalciferol (Vitamin D3);

Cyanocobalamin (Vitamin B-12);

Ergocalciferol (Vitamin D2);

Ferrous Gluconate;

Ferrous Sulfate;

Folic Acid;

Pyridoxine HCL;

Thiamine HCL;

Immune Glob, Gam Caprylate (IGG) Injection (Gamunex-C®).

Non-Preferred:

Pirbuterol Acetate;

Doxepin HCL.

**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 fee-for-service clients of the Oregon Health Plan shall have access to the most effective prescription drugs appropriate for their clinical conditions at the best possible price:

(a) Licensed health care practitioners (informed by the latest peer reviewed research) make decisions concerning the clinical effectiveness of the prescription drugs;

(b) The licensed health care practitioners also consider the health condition of a client or characteristics of a client, including the client's gender, race, or ethnicity.

(2) PMPDP Preferred Drug List (PDL):

(a) The PDL is the primary tool the Division developed to inform licensed health care practitioners about the results of the latest peer-reviewed research and cost effectiveness of prescription drugs;

(b) The PDL (as defined in 410-121-0000 (cc) consists 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 determine the drugs selected in (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 subsection (4);

(c) The Division shall evaluate selected drugs for the drug classes periodically:

(A) Evaluation shall occur more frequently at the discretion of the Division if new safety information or the release of new drugs in a class or other information that 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 changes or revisions to the PDL using the rulemaking 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 subject to the regulations outlined in OAR 410-121-0155;

(b) The brand name medication is listed as preferred on the PDL.

(6) The exception process for obtaining non-preferred physical health drugs that are not on the PDL 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 in instances:

(A) Where the prescriber in their professional judgment determines the non-preferred drug is medically appropriate after consulting with the Division or the Oregon Pharmacy Help Desk; or

(B) Where the prescriber requests an exception subject to the requirement of (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 July 8, 2014 is incorporated in rule by reference and is found on our website at: [www.orpdl.org](http://www.orpdl.org).

Stat. Auth.: ORS 409.025, 409.040, 409.110, 414.065, 413.042 & 414.325

Stats. Implemented: ORS 414.065

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;

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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

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## Oregon Health Authority, Office for Oregon Health Policy and Research Chapter 409

**Rule Caption:** Adoption of rules relating to Health Care Practitioner Credentialing, Amendments to Telemedicine & Physician Credentialing.

**Adm. Order No.:** OHP 3-2014

**Filed with Sec. of State:** 6-30-2014

**Certified to be Effective:** 7-1-14

**Notice Publication Date:** 6-1-2014

**Rules Adopted:** 409-045-0025, 409-045-0030, 409-045-0035, 409-045-0040, 409-045-0045, 409-045-0050, 409-045-0055, 409-045-0060, 409-045-0065, 409-045-0070, 409-045-0075

**Rules Amended:** 409-045-0115, 409-045-0120, 409-045-0125, 409-045-0130, 409-045-0135

**Rules Repealed:** 409-045-0000, 409-045-0105(T), 409-045-0110(T)

**Subject:** In response to Senate Bill 604 (Ch. 603, OL 2013) from the 2013 Regular Legislative Session, the Oregon Health Authority (OHA), Office for Oregon Health Policy and Research (OHPR) has been working to establish a program and database to provide credentialing organizations access to information necessary to credential or recredential all health care practitioners in Oregon. More specifically, health care practitioners or their designees must submit necessary credentialing information into a web-based common credentialing solution one time and credentialing organizations will be required to use the solution to obtain that information. An efficient common credentialing solution will capture and store credentialing information and documents, perform verifications of select credentialing information, and execute user education. As part of the legislation, OHA is developing rules on the submittal and verification of health care practitioner credentialing information and the imposition of fees. OHA intends to use chapter 409, division 45 for these rules which includes credentialing rules for physicians related to the mandated credentialing forms developed by the Advisory Committee on Physician Credentialing Information (ACPCI) and to amend and make permanent the temporary rules relating to telemedicine credentialing. To ensure alignment and consistency, OHA is proposing changes to the credentialing form rules and also clarifying changes to the telemedicine credentialing rules to become permanent by July 1, 2014. The title of division 45 is proposed to be changed to Health Care Practitioner Credentialing having a broader practitioner focus.

**Rules Coordinator:** Zarie Haverkate—(503) 373-1574

### 409-045-0025

#### Definitions

The following definitions apply to OAR 409-045-0025 to 409-045-0135:

(1) "Accreditation" means a comprehensive evaluation process in which a health care organization's systems, processes and performance are examined by an impartial external organization (accrediting entity) to ensure that it is conducting business in a manner that meets predetermined criteria and is consistent with national standards.

(2) "Advisory Group" means the Common Credentialing Advisory Group.

(3) "Authority" means the Oregon Health Authority.

(4) "Board" means a health care regulatory board or other agency that authorizes individuals to practice a profession in Oregon related to providing health care services for which the individual must be credentialed.

(5) "Credentialing" means a standardized process of inquiry undertaken to validate specific information that confirms a health care practitioner's identity, background, education, competency and qualifications related to a specific set of established standards or criteria.

(6) "Credentialing information" means information necessary to credential or recredential a health care practitioner.

(7) "Credentialing organization" means a hospital or other health care facility, physician organization or other health care provider organization, coordinated care organization, business organization, insurer or other organization that credentials health care practitioners. This includes, but is not limited to the following:

- (a) Ambulatory Surgical Centers.
- (b) Coordinated Care Organizations.
- (c) Dental Plan Issuers.
- (d) Health Plan Issuers.
- (e) Hospitals and Health Systems.
- (f) Independent Physician Associations.

(8) "Delegated credentialing agreement" means a written agreement between credentialing organizations that delegates the responsibility to perform specific activities related to the credentialing and recredentialing of health care practitioners. For telemedicine credentialing, delegated credentialing agreement has the same meaning given that term in ORS 442.015.

(9) "Distant-site hospital" means the hospital where a telemedicine provider, at the time the telemedicine provider is providing telemedicine services, is practicing as an employee or under contract.

(10) "Health care facility" has the same meaning given that term in ORS 442.015.

(11) "Health care practitioner" means an individual authorized to practice a profession related to the provision of health care services in Oregon for which the individual must be credentialed. This includes, but is not limited to the following:

- (a) Acupuncturists.
- (b) Audiologists.
- (c) Certified Registered Nurse Anesthetist.
- (d) Chiropractor.
- (e) Clinical Nurse Specialist.
- (f) Doctor of Dental Medicine.
- (g) Doctor of Dental Surgery.
- (h) Doctor of Medicine.
- (i) Doctor of Osteopathy.
- (j) Doctor of Podiatric Medicine.
- (k) Licensed Clinical Social Worker.
- (l) Licensed Dietitians.
- (m) Licensed Marriage and Family Therapists.
- (n) Licensed Massage Therapists.
- (o) Licensed Professional Counselor.
- (p) Naturopathic Physician.
- (q) Nurse Practitioner.
- (r) Occupational Therapists.
- (s) Optometrist.
- (t) Oral and Maxillofacial Surgeons.
- (u) Psychologists.
- (v) Physical Therapists.
- (w) Physician Assistants.
- (x) Psychologist Associate.
- (y) Registered Nurse First Assistant.
- (z) Speech Therapists.

(12) "Health services" has the same meaning given that term in ORS 442.015.

(13) "Hospital" has the same meaning given that term in ORS 442.015.

(14) "Originating-site hospital" means a hospital in which a patient is located while receiving telemedicine services.

(15) "Primary source verification" means the verification of an individual practitioner's reported qualifications by the original source.

(16) "Program" means the Oregon Common Credentialing Program.

(17) "Solution" means the Oregon Common Credentialing Program's electronic system through which credentialing information may be submitted to an electronic database and accessed.

(18) "Telemedicine" means the provision of health services to patients by physicians and health care practitioners from a distance using electronic communications.

Stat. Auth.: ORS 413.042, 441.056, 441.223 & 2013 OL Ch. 603  
Stats. Implemented: ORS 441.056, 441.223, 442.015 & 2013 OL Ch. 603  
Hist.: OHP 3-2014, f. 6-30-14, cert. ef. 7-1-14

# ADMINISTRATIVE RULES

## 409-045-0030

### Oregon Common Credentialing Program

The Oregon Common Credentialing Program is established within the Authority for the purpose of providing a credentialing organization access to information necessary to credential or recredential a health care practitioner. The Program shall include, but is not limited to the following:

- (1) An electronic solution through which health care practitioner credentialing information must be submitted.
- (2) A process by which health care practitioners or designees may access the Solution to submit information necessary for credentialing.
- (3) A process by which credentialing organizations may input, access, and retrieve health care practitioner credentialing information.
- (4) A process by which Boards may input and access health care practitioner credentialing information.
- (5) Coordination with Boards and the process of primary source verification of credentialing information.

Stat. Auth.: ORS 413.042 & 2013 OL Ch. 603  
Stats. Implemented: 2013 OL Ch. 603  
Hist.: OHP 3-2014, f. 6-30-14, cert. ef. 7-1-14

## 409-045-0035

### Oregon Practitioner Credentialing Application

(1) Credentialing organization shall use the Oregon Practitioner Credentialing Application and the Oregon Practitioner Recredentialing Application, both approved by the Authority based on recommendations from the Advisory Committee on Physician Credentialing Information. The Authority approved applications are available at the on the Committee's website at <http://www.oregon.gov/OHA/OHPR/ACPCI/Pages/index.aspx>.

(2) Each credentialing organization shall use the application forms listed in section (1) of this rule for the purpose of credentialing and recredentialing health care practitioners.

(3) The Program shall use the application forms listed in section (1) of this rule as the template for health care practitioner credentialing information.

Stat. Auth.: ORS 413.042, 441.056, 441.223 & 2013 OL Ch. 603  
Stats. Implemented: ORS 441.056, 441.221 - 441.223 & 2013 OL Ch. 603  
Hist.: OHP 3-2014, f. 6-30-14, cert. ef. 7-1-14

## 409-045-0040

### Credentialing Information Verifications

(1) The Program shall accept all Board verifications of credentialing information as provided in accordance with OAR 409-045-0055 and shall supplement those verifications, if necessary, to ensure compliance with national accrediting entity standards.

(2) Methods for conducting primary source verification of credentials include direct correspondence, documented telephone verification, secure electronic verification from the original qualification source or sources that meet accrediting entity requirements.

Stat. Auth.: ORS 413.042, 441.056, 441.223 & 2013 OL Ch. 603  
Stats. Implemented: ORS 441.056, 441.221 - 441.223 & 2013 OL Ch. 603  
Hist.: OHP 3-2014, f. 6-30-14, cert. ef. 7-1-14

## 409-045-0045

### Health Care Regulatory Board Participation

(1) A Board that licenses health care practitioners shall provide practitioner information and documentation to the Solution in a format and frequency as agreed by the Board and the Authority beginning January 1, 2016. A Board may agree to provide practitioner information and documentation to the Solution prior to January 1, 2016.

(2) A Board that provides information to the Solution must also provide an annual attestation to the Authority that clearly identifies the Boards specific practices related to the process of primary source verification of health care practitioner information.

(3) Use of practitioner information provided by Boards shall be authorized through data use agreements that define the rights to use or disclose the practitioner information and any limitations to that use.

(4) A Board unable to provide information to the Solution by January 1, 2016, may submit a petition to the Authority director for consideration of a waiver from the requirements of section (1). The Authority shall review the waivers at least every two years for validity. The petition for a waiver must include:

- (a) The name of the Board;
- (b) The phone number and email address for the Board contact person;
- (c) A description of specific barrier to submitting information and documentation;
- (d) Efforts or ideas to address the barrier and the timeframe for doing so; and

(e) The identification of support, including funding, needed to accomplish the efforts or ideas.

Stat. Auth.: ORS 413.042, 441.056, 441.223 & 2013 OL Ch. 603  
Stats. Implemented: ORS 441.056, 441.221 - 441.223 & 2013 OL Ch. 603  
Hist.: OHP 3-2014, f. 6-30-14, cert. ef. 7-1-14

## 409-045-0050

### Credentialing Organization Participation

(1) Credentialing organizations shall obtain health care practitioner credentialing information from the Solution beginning January 1, 2016, if that information is kept and maintained by the Solution.

(2) Credentialing organizations may not request credentialing information from a health care practitioner if that information is available through the Solution. Credentialing organizations may request additional credentialing information from a health care practitioner for the purpose of completing credentialing procedures as required by the credentialing organization.

(3) A prepaid group practice health plan that serves at least 200,000 members in Oregon and that has been issued a certificate of authority by the Department of Consumer and Business Services may petition the Authority director to be exempt from the requirements of this section. The director may award the petition if the director determines that subjecting the health plan to this section is not cost-effective. If the director grants an exemption, the exemption also applies to any health care facilities and health care provider groups associated with the health plan which refers to financial ownership and does not include services associations. Exemptions may be reviewed by the Authority every two-years for validity. The petition for exemption must include:

(a) The name of the prepaid group practice health plan petitioning the Authority and the associated health care facilities and health care provider groups to be covered under the exemption;

(b) The phone number and email address for the health plan contact person;

(c) A description of the prepaid group practice health plan;

(d) A brief description of the prepaid group practice health plan's current credentialing practices; and

(e) A justification of why the Solution is not cost-effective.

Stat. Auth.: ORS 413.042, 441.056, 441.223 & 2013 OL Ch. 603  
Stats. Implemented: ORS 441.056, 441.221 - 441.223 & 2013 OL Ch. 603  
Hist.: OHP 3-2014, f. 6-30-14, cert. ef. 7-1-14

## 409-045-0055

### Health Care Practitioner Participation

(1) Health care practitioners required to be credentialed by a credentialing organization shall submit information and documentation required pursuant to OAR 409-045-0040 to the Solution beginning on January 1, 2016 to the extent that information is not available to the Solution from the Boards. Health care practitioners or their designee may agree to provide information and documentation required pursuant to 409-045-0040 to the Solution prior to January 1, 2016.

(2) Health care practitioners must attest to all credentialing information in the Solution.

(3) Attestation of credentialing information must occur within 120 days once the complete initial credentialing application information is submitted. Re-attestation must occur within 120 days from the date of the initial attestation and every 120 days thereafter. If credentialing information is updated and attested to by a provider outside of this 120 day re-attestation cycle, the next required re-attestation shall be due 120 days from the most recent attestation.

Stat. Auth.: ORS 413.042, 441.056, 441.223 & 2013 OL Ch. 603  
Stats. Implemented: ORS 441.056, 441.221 - 441.223 & 2013 OL Ch. 603  
Hist.: OHP 3-2014, f. 6-30-14, cert. ef. 7-1-14

## 409-045-0060

### Use of Health Care Practitioner Information

(1) A credentialing organization that, in good faith, uses credentialing information provided by the Solution for the purposes of credentialing health care practitioners is immune from civil liability that might otherwise be incurred or imposed with respect to the use of that credentialing information.

(2) Health care practitioner information obtained by Credentialing Organizations through the Solution may only be used for the intended purpose of credentialing.

(3) All health care practitioner information that is received, kept, and maintained in the Solution, except for general information used for directories, is exempt from public disclosure under ORS 192.410 to 192.505.

Stat. Auth.: ORS 413.042, 441.056, 441.223 & 2013 OL Ch. 603  
Stats. Implemented: ORS 441.056, 441.221 - 441.223 & 2013 OL Ch. 603  
Hist.: OHP 3-2014, f. 6-30-14, cert. ef. 7-1-14

# ADMINISTRATIVE RULES

## 409-045-0065

### Common Credentialing Advisory Group

(1) The Authority establishes the Common Credentialing Advisory Group. Members of the Advisory Group shall be appointed by the director and shall include members who represent:

- (a) Credentialing organizations;
- (b) Health care regulatory boards;
- (c) Health care practitioners; and
- (d) The ACPCI.

(2) All members appointed shall be knowledgeable about national standards relating to health care practitioner credentialing.

(3) The term of appointment for each member is three years. If, during a member's term of appointment, the member no longer qualifies to serve, the member must resign. If there is a vacancy for any reason, the director shall appoint a new member which is effective immediately for the unexpired term.

(4) The Authority and the Advisory Group shall meet at least once per year.

(5) The Advisory Group shall advise the Authority on the credentialing process, including but not limited to the following:

- (a) Credentialing industry standards;
- (b) Common Credentialing Solution;
- (c) Recommended changes to the Oregon practitioner credentialing application pursuant to ORS 442.221 to 441.223; and
- (d) Other proposed changes or concerns brought forth by interested parties.

(6) Committee members may not receive compensation or reimbursement of expenses.

Stat. Auth.: ORS 413.042, 441.056, 441.223 & 2013 OL Ch. 603  
Stats. Implemented: ORS 441.056, 441.221 - 441.223 & 2013 OL Ch. 603  
Hist.: OHP 3-2014, f. 6-30-14, cert. ef. 7-1-14

## 409-045-0070

### Imposition of Fees

Beginning January 1, 2016, the Authority shall impose fees on credentialing organizations that access the Solution and may impose fees on health care practitioners who submit credentialing information to the Solution. Fees may not exceed the cost of administering the Program.

Stat. Auth.: ORS 413.042, 441.056, 441.223 & 2013 OL Ch. 603  
Stats. Implemented: ORS 441.056, 441.221 - 441.223 & 2013 OL Ch. 603  
Hist.: OHP 3-2014, f. 6-30-14, cert. ef. 7-1-14

## 409-045-0075

### Complaints

Complaints regarding the Program and the Program's activities shall be submitted to Authority for evaluation through the Program's website. The Authority shall provide a response to each complaint within two weeks of receiving the complaint.

Stat. Auth.: ORS 413.042, 441.056, 441.223 & 2013 OL Ch. 603  
Stats. Implemented: ORS 441.056, 441.221 - 441.223 & 2013 OL Ch. 603  
Hist.: OHP 3-2014, f. 6-30-14, cert. ef. 7-1-14

## 409-045-0115

### General Applicability

(1) These rules apply to all:

(a) Telemedicine health care practitioners who provide telemedicine services from any distant-site hospital in Oregon to patients in originating-site hospitals in Oregon.

(b) Originating-site hospitals located in Oregon that credential telemedicine health care practitioners located at distant-site hospitals in Oregon.

(2) Completion of credentialing requirements does not require a governing body of a hospital to grant privileges to a telemedicine health care practitioner and does not affect the responsibilities of a governing body under ORS 441.055.

Stat. Auth.: ORS 413.042, 441.056, 441.223 & 2013 OL Ch. 603  
Stats. Implemented: ORS 441.056, 441.223, 442.015 & 2013 OL Ch. 603  
Hist.: OHP 10-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14; OHP 3-2014, f. 6-30-14, cert. ef. 7-1-14

## 409-045-0120

### Standard List of Credentialing Documents

(1) To become credentialed by an originating-site hospital, a telemedicine healthcare practitioner or the distant-site hospital must provide the following information and documentation to the originating-site hospital:

(a) A completed current (within the past 6 months) Oregon Practitioner Credentialing Application (OPCA) and the following documents:

- (A) A copy of state medical license;

- (B) Drug Enforcement Agency certificate;
- (C) State approved foreign education equivalency certificate or report, if applicable; and
- (D) Certification of professional liability insurance.

(b) Attestation by medical staff at the distant-site hospital that they have conducted primary source verification of all materials of the OPCA except for:

- (A) Hospital affiliations other than to the distant-site hospital;
- (B) Work history beyond the previous five years.

(2) Originating-site hospitals may request documentation of all the verifications above from the distant-site hospital or the telemedicine health practitioner. Verifications that are not provided may be obtained separately by the originating-site hospital.

(3) Originating-site hospitals may not require either the telemedicine healthcare practitioner or the distant-site hospital to provide the following documentation for the purposes of credentialing or privileging a telemedicine provider:

- (a) Proof of Tuberculosis Screening;
- (b) Proof of vaccination or immunity to communicable diseases;
- (c) HIPAA training verification;
- (4) Originating-site hospitals may not require a telemedicine provider to attend physician and staff meetings at the originating-site hospital.

(5) Originating-site hospitals may not request credentialing information if the credentialing information was made available under OAR 409-045-0120(1) and is not subject to change.

(6) To become recredentialed by an originating-site hospital, every two years a telemedicine healthcare practitioner or the distant-site hospital must provide a completed current Oregon Practitioner Recredentialing Application and all other information required in OAR 409-045-0120(1).

Stat. Auth.: ORS 413.042, 441.056, 441.223 & 2013 OL Ch. 603  
Stats. Implemented: ORS 441.056, 441.223, 442.015 & 2013 OL Ch. 603  
Hist.: OHP 10-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14; OHP 3-2014, f. 6-30-14, cert. ef. 7-1-14

## 409-045-0125

### Distant-Site Hospital Agreements

Hospitals may use delegated credentialing agreements instead of the requirements in OAR-409-045-0120 to stipulate that the medical staff of the originating-site hospital shall rely upon the credentialing and privileging decisions of the distant-site hospital in making recommendations to the governing body of the originating-site hospital as to whether to credential a telemedicine provider, practicing at the distant-site hospital either as an employee or under contract, to provide telemedicine services to patients in the originating-site hospital. If a delegated credentialing agreement is in place the originating-site hospital is not limited to the information and documents prescribed by the Authority in OAR 409-045-0120.

Stat. Auth.: ORS 413.042, 441.056, 441.223 & 2013 OL Ch. 603  
Stats. Implemented: ORS 441.056, 441.223, 442.015 & 2013 OL Ch. 603  
Hist.: OHP 10-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14; OHP 3-2014, f. 6-30-14, cert. ef. 7-1-14

## 409-045-0130

### Hold Harmless Clause

Originating-site hospitals that use credentialing information provided by distant-site hospitals are immune from civil liability that might otherwise be incurred or imposed with respect to the use of that credentialing information.

Stat. Auth.: ORS 413.042, 441.056, 441.223 & 2013 OL Ch. 603  
Stats. Implemented: ORS 441.056, 441.223, 442.015 & 2013 OL Ch. 603  
Hist.: OHP 10-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14; OHP 3-2014, f. 6-30-14, cert. ef. 7-1-14

## 409-045-0135

### Information Sharing or Use of Data

(1) Telemedicine healthcare practitioners must provide written, signed permission that explicitly allows the sharing of required documents and necessary evidence by a distant-site hospital with originating-site hospitals, including but not limited to any release required under HIPAA or other applicable laws.

(2) Dissemination of information received under these rules shall only be made to individuals with a demonstrated and legitimate need to know the information.

Stat. Auth.: ORS 413.042, 441.056, 441.223 & 2013 OL Ch. 603  
Stats. Implemented: ORS 441.056, 441.223, 442.015 & 2013 OL Ch. 603  
Hist.: OHP 10-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14; OHP 3-2014, f. 6-30-14, cert. ef. 7-1-14

# ADMINISTRATIVE RULES

## Oregon Health Authority, Public Health Division Chapter 333

**Rule Caption:** Pulse oximetry screening for newborns at hospitals and birthing centers

**Adm. Order No.:** PH 18-2014

**Filed with Sec. of State:** 6-17-2014

**Certified to be Effective:** 6-17-14

**Notice Publication Date:** 5-1-2014

**Rules Amended:** 333-076-0670, 333-520-0060

**Rules Repealed:** 333-076-0670(T), 333-520-0060(T)

**Subject:** The Oregon Health Authority (Authority), Public Health Division is permanently amending rules in chapter 333, divisions 76 and 520 related to pulse oximetry screening for newborns at hospitals and birthing centers.

SB 172 (Oregon Laws 2013, chapter 334), passed during the 2013 legislative session, directs the Authority to adopt administrative rules no later than January 1, 2014 that require birthing facilities to perform pulse oximetry screening on each newborn delivered at the birthing facility before discharging the newborn. Birthing facilities include both hospitals that provide services related to the delivery of newborns and birthing centers. In response the Authority adopted temporary rules effective January 1, 2014 through June 29, 2014 that require birthing facilities to perform, prior to discharge, pulse oximetry screening on every newborn delivered at the birthing facility effective March 1, 2014. In order to comply with the statutory mandate of SB 172, the Authority must adopt permanent administrative rules prior to the expiration of the temporary administrative rules now in place. These permanent rules will establish requirements for pulse oximetry screening in hospitals and Birthing Centers. The permanent rules differ from the temporary rules now in place.

**Rules Coordinator:** Alayna Nest—(971) 673-1291

### 333-076-0670

#### Policies and Procedures

Each Center must have a detailed Policies and Procedures Manual in easily accessible form, that has been approved by the governing body or person. In order to be approved by the Division for licensing purposes, these policies and procedures must meet North American Registry of Midwives (NARM) standards. All the above noted policies must be made available to representatives of the Division on request, and subject to their approval. Failure of approval will be adequate reason for the finding of deficiencies that must be corrected for continuation of licensure. The policies must be implemented as applicable, and there must be documented evidence of implementation of the above noted policies. The policies and procedures that will be developed as applicable and implemented include:

(1) A detailed organizational chart that shows the governing body or person, and clearly delineates lines of authority, responsibility and accountability for each position included in the organization, including volunteers.

(2) Staffing — The governing body or person must ensure, through the policies and procedures, that there are adequate numbers of qualified and, where required, licensed or registered personnel on duty and immediately available to provide services intended for mothers and families, and to provide for safe maintenance of the Center.

(3) Detail of procedures to be permitted, and by whom, and method of determining the qualifications and privileges of all personnel. Staff will be required to provide documented evidence of such qualifications. Such evidence must be maintained by the Center.

(4) System for ensuring 24-hour coverage of the Center, including constant attendance by qualified attendants while a client is in the Center.

(5) System for training and for continuing education for all personnel according to their assigned duties and evaluation of skills consistent with the individual practitioners' scopes of practice. All personnel providing direct client care must be trained in cardiopulmonary resuscitation (CPR) and there must be a record of current CPR certification. In addition there must be present at each birth one practitioner trained in care and resuscitation of the newborn.

(6) System delineating how and when the Center will seek consultation with clinical specialists in obstetrics and pediatrics in order to ensure that all services, policies, and procedures meet North American Registry of Midwives (NARM) standards.

(7) Protocol for referral or transfer to appropriate health care facilities all clients whose risk status exceeds that for "low risk pregnancy."

(8) Procedures by which risk status will be assessed during the antepartal, intrapartal, and post partum period, and the identification of medical and social factors which exclude women, fetuses and newborns from the low-risk group; and for the annual review of these methods. Documentation of such assessments must be maintained in client's clinical records. Only those clients for whom prenatal and intrapartum history, physical examination, and laboratory screening procedures have demonstrated a low risk pregnancy and labor will be accepted into the Center for childbirth.

(9) System by which the Center will ensure the presence and continuing maintenance, as recommended by the manufacturer(s), of equipment needed to provide low risk maternity care, and to initiate emergency procedures in life-threatening events to the mother or baby.

(10) Plan and protocols for ensuring that emergency situations in either the mother or newborn are recognized in a timely fashion, and care is provided within the limits of the practitioner's scope of practice.

(11) System delineating how emergency transportation will be promptly available for transport of the mother and/or newborn to a health care facility with the capacity for emergency care of women, in all the stages of labor, and newborns. The written policy must include a listing of situations for the mother and/or newborn that would have the potential to necessitate emergency transfer. The policy must also include the requirement that a transfer plan for each patient be developed.

(12) Systems for ensuring the orientation and education of women and families registering for care at the Center so that they will be informed as to the benefits and risks of the services available to them at the Center and the qualifications and licensure status of practitioners at the Center. They must be fully informed of the risk criteria as defined in OAR 333-076-0650 and provide written consent. The client, as a part of the informed consent, must also agree in advance to transfer to another clinician or appropriate health care facility, should the need occur due to the development of unexpected risk factors after admission to the Center. The client must be informed of the benefits and risks of such a transfer.

(13) System for the sterilization of equipment and supplies, unless only pre-packaged and pre-sterilized items are used.

(14) System to ensure the performance of appropriate laboratory studies and to ensure that the results are available in a timely manner.

(15) System for the storage and administration of drugs. All medications must be prescribed and/or administered within the individual practitioner's licensure and/or scope of practice.

(16) System to ensure the timely administration of Rh immune globulin to the mother, where applicable.

(17) System to ensure the timely appropriate administration of Vitamin K to the newborn, according to rules of the Division.

(a) The purpose of ORS 433.303 to 433.314 is to protect newborn infants against hemorrhagic disease of the newborn.

(b) The Vitamin K forms suitable for use are forms of Vitamin K1 (Phytonadione), available in injectable or oral forms: as Mephyton for oral use, or as aquamephyton or konakion for injectable use. The Vitamin K dose is to be administered within the first 24 hours of delivery. Menadiolone (Vitamin K3) is not recommended for prophylaxis and treatment of hemorrhagic disease of the newborn.

(c) The dose of any of the Vitamin K1 forms to be administered is one dose of 0.5 to 1.0 mg., if given by injection, or one dose of 1.0 to 2.0 mg. if given orally.

(d) A parent may, after being provided a full and clear explanation, decline to permit the administration of Vitamin K based on religious tenets and practices. In this event, the parent must sign a form acknowledging his/her understanding of the reason for administration of Vitamin K and possible adverse consequences in the presence of a person who witnessed the instruction of the parent, and who must also sign the form. The form must become a part of the clinical record of the newborn infant.

(18) System to ensure the timely and appropriate collection of blood from the newborn for testing by the Oregon State Public Health Laboratory, Newborn Screening Program, for the Metabolic Diseases listed in 333-024-0210.

(19) System to ensure that pulse oximetry screening is performed on every newborn infant delivered at the Birthing Center before the infant is discharged in conformance with the following requirements:

(a) The pulse oximetry screening must be performed using evidence-based guidelines such as those recommended by Strategies for Implementing Screening for Critical Congenital Heart Disease, AR Kemper et al., Pediatrics 2011;128(5): e1259-1267.

# ADMINISTRATIVE RULES

(b) The Birthing Center must have policies and procedures based on the guidelines required by subsection (a) of this section for:

(A) Determining what is considered a positive screening result; and

(B) Determining what follow-up services, treatment or referrals must be provided if a newborn infant has a positive screening result.

(c) A Federal Drug Administration (FDA) approved motion tolerant pulse oximeter must be used.

(d) The pulse oximetry screening must be performed no sooner than 24 hours after birth or as close to discharge of the newborn infant as possible.

(e) Before performing pulse oximetry screening on newborn infants, individuals must have received training on how to correctly operate the pulse oximeter and the policies and procedures associated with the screening. The Birthing Center must document this training.

(f) If a newborn infant is admitted to a hospital as the result of a transfer from the Birthing Center before a pulse oximetry screening is performed, the hospital from which the newborn infant is discharged to home is responsible for performing the screening.

(g) The Birthing Center must provide the following notifications and document them in the newborn infant's medical record:

(A) Prior to the pulse oximetry screening, notify a parent or legal representative of the newborn about the reasons for the screening and the risks and consequences of not screening.

(B) Following the pulse oximetry screening, notify the health care provider responsible for the newborn infant and the infant's primary care provider of the results of the screening.

(C) Following the pulse oximetry screening and prior to discharge, notify a parent or legal representative of the newborn infant of the screening result, an explanation of its meaning and, if it is a positive screening result, provide information about the importance of timely diagnosis and intervention.

(h) A parent or legal representative of a newborn infant may decline pulse oximetry screening and, if screening is declined, the Birthing Center must document the declination in the newborn infant's medical record.

(i) Following the pulse oximetry screening, the Birthing Center, in accordance with the applicable standard of care, must provide any appropriate follow-up services or treatment for the newborn infant if necessary or provide a referral to a parent or legal representative of the newborn for follow-up services or treatment if necessary.

(j) The Birthing Center must document in the newborn infant's medical record that the screening was performed, the screening result, the names of the health care providers who were notified of the screening result, and any follow-up services or treatment or referral for services or treatment.

(k) No newborn infant may be refused screening because of the inability of a parent or legal representative to pay for the screening.

(20) Protocol delineating the steps to ensure the prompt and safe evacuation of the Center in the event of emergency situations, such as fire. The Center must ensure the evaluation of staff in managing such situations by periodic drills for fire, and/or other emergencies. Such drills must be documented.

(21) System of infection control to address the prevention and early recognition of the possibility of infection, and timely and acceptable methods of control. This includes written documentation of the problem, and measures taken for control, and must at least meet the requirements of the rules of the Division. Documentation must also include methods for the control and prevention of cross-infection between clients and services in accordance with 2003 Center for Disease Control and Prevention "Guidelines for Environmental Infection Control in Health-Care Facilities."

(22) System to be used for the prevention of Ophthalmia Neonatorum in the newborn OAR 333-019-0036(2). Prophylaxis for Gonococcal Ophthalmia Neonatorum:

(a) The practitioner attending the birth of an infant must, after evaluating the infant as being at risk and within two hours of delivery, instill appropriate prophylactic antibiotic ointment from single patient use applicators into each eye of the newborn infant;

(b) Parent(s) refusing to allow prophylaxis for their infant(s) must be informed, by the attending Health Care Provider, of the risks attendant to such action and must sign a witnessed affidavit to testify that they have been so informed and nonetheless refuse to allow prophylaxis.

(c) If Vitamin K and/or Gonococcal Ophthalmia Neonatorum Prophylaxis cannot be administered by the individual delivering the newborn, methods must be described to ensure that these services are arranged by referral.

(23) System to ensure that appropriate vital records are filed according to the rules of the Division.

(24) System for a semi-annual clinical record audit to evaluate the care process and outcome.

Stat. Auth.: ORS 441.025 & 442.015

Stats. Implemented: ORS 441.025 & 442.015

Hist.: HD 26-1985, f. & ef. 10-28-85; HD 2-1990, f. 1-8-90, cert. ef. 1-15-90, Renumbered from 333-076-0420; PH 15-2006, f. & cert. ef. 6-27-06; PH 18-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-29-14; PH 18-2014, f. & cert. ef. 6-17-14

## 333-520-0060

### Maternity Services

(1) General hospitals are required to comply with this rule. A low occupancy acute care hospital shall comply with this rule if it offers maternity services.

(2) A hospital that provides maternity services shall have separate maternity facilities and a maternity care department that:

(a) Has labor, delivery, recovery, postpartum, and nursery rooms that conform to the applicable requirements of OAR chapter 333, division 535;

(b) Requires every person in the delivery room during a delivery to be appropriately attired according to the hospital's Infection Control Policy;

(c) Has appropriate resuscitation equipment immediately available to rooms where deliveries are planned and where newborn infants are kept;

(d) Has a warmed blanket or incubator for newborns to prevent thermal loss;

(e) Has incubators for premature infants equipped with a governor to control the flow of oxygen at 40 percent or under, and an oxygen analyzer;

(f) Has an accurate scale for weighing of infants; and

(g) Includes a nursery and a separate bassinet for each infant with a clean mattress covered with suitable sheeting, washable pads, and bed linen that is kept clean at all times.

(3) A health care practitioner attending the birth of a newborn shall evaluate and treat a newborn at risk for chlamydial or gonococcal ophthalmia neonatorum in accordance with OAR 333-019-0036.

(4) A parent or legal representative that refuses to allow prophylaxis for an infant shall be informed by the attending health care practitioner of the risks of the refusal and must sign a witnessed affidavit that attests they have been so informed and nonetheless refuse to allow prophylaxis.

(5) A hospital shall ensure that all newborns are given Vitamin K at birth as required by ORS 433.303 through 433.314.

(a) A physician or midwife attending the mother at the birth of the child shall be responsible for ensuring that the newborn infant receives Vitamin K within 24 hours of birth to protect the infant against hemorrhagic disease of the newborn.

(b) The Vitamin K forms suitable for use are:

(A) Vitamin K 1 (Phytonadione) for oral or injectable use;

(B) Mephyton for oral use; or

(C) Aquamephyton or konakion for injectable use.

(c) A parent may, after being provided a full and clear explanation, decline to permit the administration of Vitamin K based on religious tenets and practices. If a parent or legal representative declines Vitamin K, the parent shall sign a form acknowledging his or her understanding of the reason for administration of Vitamin K and possible adverse consequences in the presence of a person who witnessed the instruction of the parent, who shall also sign the form. The form shall become a part of the medical record of the newborn infant.

(6) A hospital shall ensure that every newborn infant born in the hospital is tested for Metabolic Diseases as required by OAR 333-024-0210 through 333-024-0235 and instructions to the parents or legal representative regarding the testing that be documented in the medical record.

(7) A hospital shall ensure that every newborn infant born in the hospital receives a Newborn Hearing Screening Test as required by ORS 433.321 and OAR chapter 333, division 20.

(8) A hospital must perform pulse oximetry screening on every newborn infant delivered at the hospital before discharging the newborn infant in conformance with the following requirements:

(a) The pulse oximetry screening must be performed using evidence-based guidelines such as those recommended by Strategies for Implementing Screening for Critical Congenital Heart Disease, AR Kemper et al., Pediatrics 2011;128(5): e1259-1267.

(b) The hospital must have policies and procedures based on the guidelines required by subsection (a) of this section for:

(A) Determining what is considered a positive screening result; and

(B) Determining what follow-up services, treatment, or referrals must be provided if a newborn infant has a positive screening result.

(c) A Federal Drug Administration (FDA) approved motion tolerant pulse oximeter must be used.

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(d) The pulse oximetry screening must be performed no sooner than 24 hours after birth or as close to discharge of the newborn infant as possible.

(e) If a newborn infant is admitted to a hospital as the result of a transfer from another hospital or Birthing Center before a pulse oximetry screening is performed, the hospital from which the newborn infant is discharged to home is responsible for performing the screening.

(f) The hospital must provide the following notifications and document them in the newborn infant's medical record:

(A) Prior to the pulse oximetry screening, notify a parent or legal representative of the newborn about the reasons for the screening and the risks and consequences of not screening.

(B) Following the pulse oximetry screening, notify the health care provider responsible for the newborn infant and the infant's primary care provider of the results of the screening.

(C) Following the pulse oximetry screening and prior to discharge, notify a parent or legal representative of the newborn infant of the screening result, an explanation of its meaning and, if it is a positive screening result, provide information about the importance of timely diagnosis and intervention.

(g) A parent or legal representative of a newborn infant may decline pulse oximetry screening and, if screening is declined, the hospital must document the declination in the newborn infant's medical record.

(h) Following the pulse oximetry screening, the hospital, in accordance with the applicable standard of care, must provide any appropriate follow-up services or treatment for the newborn infant if necessary or provide a referral to a parent or legal representative of the newborn for follow-up services or treatment if necessary.

(i) The hospital must document in the newborn infant's medical record that the screening was performed, the screening result, the names of the health care providers who were notified of the screening result, and any follow-up services or treatment or referral for services or treatment.

(j) No newborn infant may be refused screening because of the inability of a parent or legal representative to pay for the screening.

(9) Every infant born in a hospital shall be marked for identification before the infant is removed from the place of delivery and such identification shall not be removed from the infant until the infant is discharged.

(10) A hospital shall not admit visitors to a delivery room, maternity rooms, wards, units, or the nursery except in accordance with the hospital's visiting policy.

(11) A hospital shall ensure that persons entering the nursery are attired according to the hospital infection control policy and that hands are washed before touching an infant.

(12) A hospital shall follow its infection control policy when handling and storing linens.

(13) Formula feedings and any other feedings shall be given only as prescribed in writing by the physician or certified nurse midwife.

(14) A hospital shall maintain and preserve a log of births giving date of birth, name of newborn, and mother's name and chart number, in addition to complying with the requirements of the Authority's Center for Health Statistics.

(15) A hospital may use a part of the maternity department for selected, non-communicable non-obstetrical patients as defined by hospital policy and approved by the hospital's infection control program under the following conditions:

(a) Patients admitted or transferred to the maternity department shall be instructed by appropriate maternity service personnel as to their responsibilities regarding use of the facility.

(b) Patients admitted to the maternity department shall be limited to obstetrical patients admitted for delivery, patients with obstetric complications, and selected non-communicable, non-obstetrical patients.

(c) Obstetrical patients and medical/surgical patients shall not occupy the same room.

(d) If necessary, one or more medical/surgical patients shall be transferred to another service in order to admit obstetrical patients.

(16) A hospital shall adhere strictly to the guidelines for standard precautions developed by the Hospital Infection Control Practices Advisory Committee (HICPAC) when caring for obstetrical patients with infectious conditions. Patients with infectious conditions requiring strict isolation according to the above guidelines shall be transferred out of the maternity department following delivery, and given care in an area of the hospital where that isolation can be provided. If a maternity patient is found to have an infectious condition during surgery or delivery, the patient shall be returned to the maternity department and isolated according to hospital infection control policy.

(17) A delivery room suite may be used for surgical procedures on non-obstetrical patients if approved by the Chief of Obstetrics in accordance with medical staff rules and regulations.

(18) A hospital with maternity services may place stable postpartum patients and stable newborns, as those terms are defined in OAR 333-500-0010, on another acute care unit on a periodic basis under the following conditions:

(a) When a postpartum patient or newborn to be transferred out of the OB unit meet the hospital's criteria for care on another unit as described in this rule;

(b) Where the decision to place a postpartum patient or newborn on another unit is based on currently accepted postpartum and newborn care standards and the ability of that unit to meet the needs of the patient; and

(c) When nursing staff on the non-OB unit have received training required by this rule and have demonstrated continuing competence.

(19) A hospital that provides care to postpartum patients and newborns on non-OB units shall:

(a) Develop and implement policies and procedures that include but are not limited to:

(A) The transfer of postpartum patients and newborns to non-OB units including a delineation of the authority for medical, clinical and administrative nursing staff, and, when applicable, nurse practitioner staff to make the decision;

(B) Staffing guidelines for the nursing care of postpartum patients and newborns on the non-OB unit;

(C) Provision of information to maternity patients of possible or intended placement on a non-OB unit;

(D) Provision of consumer information related to the availability and location of specialty maternity services;

(E) Infection control practices including the use of standard precautions;

(F) Procedures for patient placement, privacy, and safety that prohibit postpartum patients and newborns from occupying the same room as non-obstetrical patients;

(G) Protocols for the placement of newborns without mothers;

(H) Procedures to assure the inclusion of the care of postpartum patients and newborns on non-OB units in the hospital's quality assurance program; and

(I) Delineation of hospital protocols for the return of postpartum patients and newborns to the OB unit, including addressing situations when safe care can no longer be provided on the non-OB unit.

(b) Develop and implement staff training, continuing education, and continuing competency program that includes but is not limited to:

(A) Postpartum nursing care;

(B) Nursing care of the newborn;

(C) Newborn resuscitation;

(D) Newborn feeding;

(E) Maternal and family education;

(F) Infection control practices including the use of standard precautions; and

(G) Maternity services policies and procedures including those required in subsection (19)(a) of this rule.

Stat. Auth.: ORS 441.055

Stats. Implemented: ORS 441.055 & 442.015

Hist.: HB 183, f. & ef. 5-26-66; HB 209, f. 12-18-68; HB 252, f. 7-22-70, ef. 8-25-70; HD 25, f. 10-20-72, ef. 11-1-72; HD 72, f. 11-7-74, ef. 12-11-74; HD 7-1979, f. & ef. 7-17-79; HD 11-1980, f. & ef. 9-10-80; Renumbered from 333-023-0126; HD 29-1988, f. 12-29-88, cert. ef. 1-1-89; Renumbered from 333-072-0005(12), (13), & (14); HD 21-1993, f. & cert. ef. 10-28-93; HD 30-1994, f. & cert. ef. 12-13-94; HD 2-2000, f. & cert. ef. 2-15-00; OH 3-2001, f. & cert. ef. 3-16-01; PH 11-2009, f. & cert. ef. 10-1-09; PH 17-2012, f. 12-20-12, cert. ef. 1-1-13; PH 18-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-29-14; PH 18-2014, f. & cert. ef. 6-17-14

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**Rule Caption:** Relinquishment of Local Public Health Authority.

**Adm. Order No.:** PH 19-2014(Temp)

**Filed with Sec. of State:** 6-20-2014

**Certified to be Effective:** 6-20-14 thru 12-17-14

**Notice Publication Date:**

**Rules Adopted:** 333-014-0042, 333-014-0080, 333-014-0090, 333-014-0100

**Rules Amended:** 333-014-0040

**Subject:** The Oregon Health Authority (Authority), Public Health Division is temporarily amending and adopting administrative rules in chapter 333, division 14 pertaining to relinquishment of local public health authority. At least one county has provided notice to the Authority that it intends to relinquish public health authority and

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there is no process in place for how this transition of authority will take place, what responsibilities the Authority will have in acting as the local public health authority, or the extent to which a county or health district remains responsible for the costs of enforcing public health laws. These rules need to be adopted promptly so that on October 1, 2014, when the Authority has the responsibility for providing local public health services in a county, it is clear what those responsibilities are and the extent to which the county remains responsible for the costs of enforcement.

**Rules Coordinator:** Alayna Nest—(971) 673-1291

## 333-014-0040

### Purpose

The purpose of these rules is to establish minimum standards and administrative rules to:

(1) Define the organization, operation, and extent of activities required or expected of county and district health departments to carry out their responsibilities in implementing the public health laws of this state, and the rules and regulations of the State Public Health Division.

(2) Assist in the development, improvement, and support of local health departments in their efforts to promote and protect the health of Oregon citizens.

(3) Govern the relinquishment of local public health authority and the actions that the Public Health Division must take following a relinquishment of local public health authority.

Stat. Auth.: ORS 413.042 & 431.350

Stats. Implemented: ORS 431.345, 431.380 & 431.385

Hist.: HB 269, f. 4-19-71, ef. 5-11-71; HD 5-1990, f. & cert. ef. 1-24-90; PH 19-2014(Temp), f. & cert. ef. 6-20-14 thru 12-17-14

## 333-014-0042

### Definitions

As used in OAR chapter 333, division 14:

(1) "Enforcement" means an action taken to compel the requirements of the law.

(2) "Local public health administrator" has the meaning given that term in ORS 431.260.

(3) "Local public health authority" has the meaning given that term in ORS 431.260.

(4) "Public Health Division" means the public health division within the Oregon Health Authority.

(5) "Public health law" has the meaning given that term in ORS 431.260.

Stat. Auth.: ORS 413.042 & 431.350

Stats. Implemented: ORS 431.345, 431.380 & 431.385

Hist.: PH 19-2014(Temp), f. & cert. ef. 6-20-14 thru 12-17-14

## 333-014-0080

### Relinquishment of Local Public Health Authority

(1) A county or health district may relinquish its local public health authority.

(a) To relinquish its local public health authority, a county or health district must submit the relinquishment in writing with not less than 90 days advance notice to the Public Health Division.

(b) In addition to the notice of relinquishment under subsection (a) of this section, the county or health district must provide notice of the termination of any contract or agreement with the Public Health Division, in accordance with the termination provisions of the contract or agreement, if that contract or agreement concerns any of the services or activities required by a local public health authority under OAR 333-014-0050(2), including but not limited to the financial assistant agreement for local public health services.

(2) The Public Health Division will reasonably act to assume such public health authority and commensurate responsibilities or find a replacement contractor to assume such authority and responsibilities in accordance with OAR 333-014-0090, if a local public health authority has relinquished its authority. Assumption or transfer of such authority or responsibilities by the Public Health Division does not relieve the county or health district of its obligations arising during the period of its authority or constitute a release or waiver by the Public Health Division with respect to such obligations.

(3) A county or health district that has relinquished its public health authority:

(a) Is not eligible for funds under ORS 431.380 or funds that are customarily distributed through an agreement delegating state public health authority to the county or health district;

(b) Shall return any unexpended funds that were distributed under ORS 431.380, or through any other agreement through which state public health authority was delegated to a county or health district; and

(c) May not be delegated any authority under ORS 446.425, 448.100, 448.170, and 624.510.

(4) A county or health district that has relinquished its public health authority may, at any time, request that its authority be restored. Such a request must be made to the State Public Health Director in writing and shall include an annual plan, a detailed explanation about how the issues that led to relinquishment have been addressed, and a plan to transition authority from the Public Health Division to the county or health district. The State Public Health Director shall consider the request and respond, in writing, either granting or denying the request within 90 days of the receipt of the request.

(a) If the request is approved, the Public Health Division shall identify the date that authority shall be transferred back to the county or health district.

(b) If the request is denied the State Public Health Director shall explain the basis for rejecting the request and shall include information about how the county or health district can address its deficiencies.

Stat. Auth.: ORS 413.042 & 431.375

Stats. Implemented: ORS 431.375

Hist.: PH 19-2014(Temp), f. & cert. ef. 6-20-14 thru 12-17-14

## 333-014-0090

### Public Health Division as Local Public Health Authority

(1) If the local public health authority has relinquished its public health authority the Public Health Division shall perform the following services or activities, or contract with a private person or entity; an agency; or another county or health district to perform the following services or activities:

(a) The control and epidemiology of preventable diseases and conditions, including but not limited to:

(A) Communicable disease investigation and control;

(B) Tuberculosis case management;

(C) Tobacco prevention, education and control activities;

(D) Assuring the availability of immunizations for human and animal target populations; and

(E) Disease control in schools.

(b) Parent and child health, which includes but is not limited to:

(A) Immunizations;

(B) Parent and child health services (including Maternal and Child Health block grant);

(C) Family planning; and

(D) Women, infants, and children nutrition services (WIC).

(c) Providing information and referrals to the public regarding local public health services.

(d) Environmental health services, including but not limited to inspection, licensure, consultation and complaint investigation of food services, tourist facilities, public swimming and spa pools, and drinking water, under ORS chapters 446, 448 and 624.

(e) Public health emergency preparedness.

(2) Relinquishment of public health authority under OAR 333-014-0080 shall be considered a failure or refusal to administer or enforce public health laws or rules under ORS 431.170.

(3) A county or health district shall be financially responsible for the costs incurred by the Public Health Division or its contractor in taking enforcement actions. Enforcement actions include but are not limited to:

(a) Isolation or quarantine under ORS 433.121 to 433.123;

(b) Inspections, investigations, and legally required activities under:

(A) ORS 433.006 (control of communicable disease);

(B) ORS 433.267 (immunization of school children);

(C) ORS 433.855 (Indoor Clean Air Act);

(D) ORS 446.324, 446.335, 446.347 (tourist facilities);

(E) ORS 448.040, 448.051, 448.150, 448.175, 448.255, 448.280, 448.285 (water systems, pools and spas);

(F) ORS 624.020(3), 624.060, 624.073, 624.080(3), 624.086(5), 624.091(1), 624.096, 624.111(1), 624.340, 624.370, 624.380, 624.420 (restaurants, bed and breakfast facilities, commissaries, mobile units, vending machines); and

(G) ORS 433.235 to 433.284 (disease control in schools).

(c) Denials, suspensions, or revocations of a registration, license or certificate issued under ORS chapters 446, 448, or 624, imposition of civil penalties under ORS 433.855 and ORS chapters 446, 448, or 624 or other agency action that under any public health law is a contested case proceeding or that results in the issuance of an order in other than a contested case.

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- (d) Court actions to ensure compliance with state public health laws.
  - (e) The defense of any agency action in court.
- Stat. Author: ORS 413.042, 431.262 & 431.375  
Stats. Implemented: ORS 431.170 & 431.375  
Hist.: PH 19-2014(Temp), f. & cert. ef. 6-20-14 thru 12-17-14

## 333-014-0100

### Applicability

(1) OAR 333-014-0080 and 333-014-0090 apply to any county or health district that:

(a) Has provided notice of relinquishment prior to June 20, 2014 but not yet relinquished local public health authority; or

(b) Provides notice of or relinquishes local public health authority on or after June 20, 2014.

(2) For purposes of these rules the date of relinquishment is the date the county or health district no longer exercises local public health authority.

Stat. Author: ORS 413.042 & 431.375

Stats. Implemented: ORS 431.375

Hist.: PH 19-2014(Temp), f. & cert. ef. 6-20-14 thru 12-17-14

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**Rule Caption:** Adopts rules governing medical marijuana dispensary regulation

**Adm. Order No.:** PH 20-2014

**Filed with Sec. of State:** 7-11-2014

**Certified to be Effective:** 7-11-14

**Notice Publication Date:** 5-1-2014

**Rules Adopted:** 333-008-1000, 333-008-1010, 333-008-1020, 333-008-1030, 333-008-1040, 333-008-1050, 333-008-1060, 333-008-1070, 333-008-1080, 333-008-1090, 333-008-1100, 333-008-1110, 333-008-1120, 333-008-1130, 333-008-1140, 333-008-1150, 333-008-1160, 333-008-1170, 333-008-1180, 333-008-1190, 333-008-1200, 333-008-1210, 333-008-1220, 333-008-1230, 333-008-1250, 333-008-1260, 333-008-1280, 333-008-1290

**Rules Amended:** 333-008-0010, 333-008-0020, 333-008-0025, 333-008-0045, 333-008-0050, 333-008-0120

**Rules Repealed:** 333-008-0010(T), 333-008-0020(T), 333-008-0025(T), 333-008-0045(T), 333-008-0050(T), 333-008-0120(T), 333-008-1000(T), 333-008-1010(T), 333-008-1020(T), 333-008-1030(T), 333-008-1040(T), 333-008-1050(T), 333-008-1060(T), 333-008-1070(T), 333-008-1080(T), 333-008-1090(T), 333-008-1100(T), 333-008-1110(T), 333-008-1120(T), 333-008-1130(T), 333-008-1140(T), 333-008-1150(T), 333-008-1160(T), 333-008-1170(T), 333-008-1180(T), 333-008-1190(T), 333-008-1200(T), 333-008-1210(T), 333-008-1220(T), 333-008-1230(T), 333-008-1250(T), 333-008-1260(T), 333-008-1280(T), 333-008-1290(T)

**Subject:** The Oregon Health Authority, Public Health Division is adopting and amending rules in chapter 333, division 8 to govern the newly created Medical Marijuana Dispensary Program, as required by HB 3460 (Oregon Laws 2013, chapter 726). This program has been created to regulate and inspect facilities that transfer marijuana to Oregon Medical Marijuana Program cardholders, and ensure that they meet certain standards related to public and patient safety.

**Rules Coordinator:** Alayna Nest—(971) 673-1291

## 333-008-0010

### Definitions

For the purposes of OAR 333-008-0000 through 333-008-0120, the following definitions apply:

(1) "Act" means the Oregon Medical Marijuana Act.

(2) "Applicant" means a person applying for an Oregon Medical Marijuana registry identification card on a form prescribed by the Authority.

(3) "Attending physician" means a Doctor of Medicine (MD) or Doctor of Osteopathy (DO), licensed under ORS chapter 677, who has primary responsibility for the care and treatment of a person diagnosed with a debilitating medical condition.

(4) "Authority" means the Oregon Health Authority.

(5) "Debilitating medical condition" means:

(a) Cancer, glaucoma, agitation incident to Alzheimer's disease, positive status for human immunodeficiency virus or acquired immune deficiency syndrome, or a side effect related to the treatment of these medical conditions;

(b) A medical condition or treatment for a medical condition that produces, for a specific patient, one or more of the following:

(A) Cachexia;

(B) Severe pain;

(C) Severe nausea;

(D) Seizures, including but not limited to seizures caused by epilepsy; or

(E) Persistent muscle spasms, including but not limited to spasms caused by multiple sclerosis;

(c) Post-traumatic stress disorder; or

(d) Any other medical condition or side effect related to the treatment of a medical condition adopted by the Authority by rule or approved by the Authority pursuant to a petition submitted under OAR 333-008-0090.

(6) "Delivery" means the actual, constructive or attempted transfer, other than by administering or dispensing, from one person to another of a controlled substance, whether or not there is an agency relationship, but does not include transfer of marijuana from one patient to another patient if no consideration is paid for the transfer.

(7) "Designated primary caregiver" means an individual 18 years of age or older who has significant responsibility for managing the well-being of a person who has been diagnosed with a debilitating medical condition and who is designated as such on that person's application for a registry identification card or in other written notification to the Authority. "Designated primary caregiver" does not include the person's attending physician.

(8) "Food stamps" means the Supplemental Nutrition Assistance Program as defined and governed by ORS 411.806 through 411.845.

(9) "Grow site" means a specific location registered by the Authority used by the grower to produce marijuana for medical use by a specific patient.

(10) "Grow site registration card" means the card issued to the patient and displayed at the grow site.

(11) "Grower" has the same meaning as "person responsible for a marijuana grow site."

(12) "Immature plant" has the same meaning as "seedling or start."

(13) "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. It 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 therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

(14) "Mature plant" means a marijuana plant that does not fall within the definition of a seedling or a start.

(15) "Medical marijuana facility" is a facility, registered by the Authority, under OAR 333-008-1050.

(16) "Medical use of marijuana" means the production, possession, delivery, or administration of marijuana, or paraphernalia used to administer marijuana, as necessary for the exclusive benefit of a person to mitigate the symptoms or effects of his or her debilitating medical condition.

(17) "Oregon Health Plan (OHP)" means the medical assistance program administered by the Authority under ORS chapter 414.

(18) "OMMP" refers to the office within the Authority that administers the provisions of the OMMA, and all policies and procedures pertaining thereto, as set forth in these rules.

(19) "Parent or legal guardian" means the custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age.

(20) "Patient" has the same meaning as "registry identification cardholder."

(21) "Person responsible for a marijuana grow site" means a person who has been selected by a patient to produce medical marijuana for the patient, and who has been registered by the Authority for this purpose.

(22) "Person responsible for a medical marijuana facility" has the meaning given that term in OAR 333-008-1010.

(23) "Primary responsibility" as that term is used in relation to an attending physician means that the physician:

(a) Provides primary health care to the patient; or

(b) Provides medical specialty care and treatment to the patient as recognized by the American Board of Medical Specialties; or

(c) Is a consultant who has been asked to examine and treat the patient by the patient's primary care physician licensed under ORS Chapter 677,

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the patient's physician assistant licensed under ORS Chapter 677, or the patient's nurse practitioner licensed under ORS Chapter 678; and,

(d) Has reviewed a patient's medical records at the patient's request and has conducted a thorough physical examination of the patient, has provided or planned follow-up care, and has documented these activities in the patient's medical record.

(24) "Production" includes the manufacture, planting, cultivation, growing or harvesting of a controlled substance.

(25) "Registry identification card" means a document issued by the Authority that identifies a person authorized to engage in the medical use of marijuana, and the person's designated primary caregiver, if any.

(26) "Registry identification cardholder" means a person who has been diagnosed by an attending physician with a debilitating medical condition and for whom the use of medical marijuana may mitigate the symptoms or effects of the person's debilitating medical condition, and who has been issued a registry identification card by the Authority.

(27) "Replacement registry identification card" means a new card issued in the event that a registry identification cardholder's card, designated primary caregiver identification card, grower identification card, or grow site registration card is lost or stolen, or if a registry identification cardholder's designation of primary caregiver, grower, or grow site has changed.

(28) "Seedling or start" means a marijuana plant that has no flowers, is less than 12 inches in height, and less than 12 inches in diameter. A seedling or start that does not meet all three criteria shall be considered a mature plant.

(29) "Supplemental Security Income (SSI)" means the monthly benefit assistance program administered by the federal government for persons who are age 65 or older, or blind, or disabled and who have limited income and financial resources.

(30) "Usable marijuana" means the dried leaves and flowers of the plant Cannabis family Moraceae and any mixture or preparation thereof, that are appropriate for medical use. "Usable marijuana" does not include the seeds, stalks and roots of the plant.

(31) "Written documentation" means a statement signed and dated by the attending physician of a person diagnosed with a debilitating medical condition or copies of the person's relevant medical records, maintained in accordance with standard medical record practices.

Stat. Auth.: ORS 475.338

Stats. Implemented: ORS 475.300 - 475.346

Hist.: OHD 15-1998(Temp), f. & cert. ef. 12-24-98 thru 6-22-99; OHD 3-1999, f. & cert. ef. 4-29-99; OHD 13-2000(Temp), f. & cert. ef. 12-21-00 thru 6-15-01; OHD 18-2001, f. & cert. ef. 8-9-01; OHD 19-2001(Temp), f. & cert. ef. 8-10-01 thru 1-31-02; Administrative correction 3-14-02; OHD 6-2002, f. & cert. ef. 3-25-02; PH 9-2003, f. 6-26-03, cert. ef. 7-1-03; PH 18-2005, f. 12-30-05, cert. ef. 1-1-06; PH 15-2007, f. 12-19-07, cert. ef. 1-1-08; PH 21-2010, f. & cert. ef. 9-13-10; PH 5-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11; PH 8-2011, f. 9-30-11, cert. ef. 10-1-11; PH 1-2014, f. & cert. ef. 1-13-14; PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14; PH 20-2014, f. & cert. ef. 7-11-14

## 333-008-0020

### New Registration Application and Verification

(1) A person may apply for a registry identification card on forms prescribed by the Authority. In order for an application to be considered complete, an applicant must submit the following:

(a) An application form signed and dated by the applicant;

(b) Copies of legible and valid U.S. state or federal issued photographic identification that includes last name, first name, and date of birth from the applicant, the designated primary caregiver, and grower, as applicable. Acceptable forms of current U.S. state or federal issued photographic identification include but are not limited to:

(A) Driver's license;

(B) State identification card;

(C) Passport; or

(D) Military identification card.

(c) Written documentation, which may consist of relevant portions of the applicant's medical record, signed by the applicant's attending physician within 90 days of the date of receipt by the Authority, which describes the applicant's debilitating medical condition and states that the use of marijuana may mitigate the symptoms or effects of the applicant's debilitating medical condition;

(d) If applicable, a completed and notarized "Declaration of Person Responsible for Minor" form for any person under 18 years of age, signed and dated by the person responsible for the minor;

(e) The name of a designated primary caregiver, if any;

(f) The name of a designated grower (either the patient or another person), if any and the location of the grow site; and

(g) An application fee and grow site registration fee, if applicable, in the form of cash, bank check, money order, or personal check.

(2) The Authority shall process an application prior to issuing registry identification cards to assure that the application is complete and information provided has been verified.

(a) The Authority shall only accept applications that are mailed or are hand-delivered.

(b) If an applicant does not provide all the information required and the application is considered incomplete, the Authority shall notify the applicant of the information that is missing, and shall allow the applicant 14 days to submit the missing information.

(c) If an applicant does not provide the information necessary to declare an application complete, or to complete the verification process within the timelines established in subsections (2)(b) and (3)(e) of this rule, the application shall be rejected as incomplete. An applicant whose application is rejected as incomplete may reapply at any time. If an applicant submits an application fee and the application is subsequently denied or rejected, the application fee may be applied toward a new application submitted within one year of the denial or rejection date.

(d) The Authority may reject an application if the application or supporting documents appear to be altered (for example, writing is whited out). An application shall be denied in accordance with OAR 333-008-0030 if an application or supporting documents are determined to have been falsified.

(e) The Authority may verify information on each application and accompanying documentation, including:

(A) Contacting each applicant by telephone or by mail. If proof of identity is uncertain, the Authority may require a face-to-face meeting and may require the production of additional identification materials;

(B) Contacting a minor's parent or legal guardian;

(C) Contacting the Oregon Medical Board to verify that an attending physician is licensed to practice in the state and is in good standing;

(D) Contacting the attending physician to request further documentation to support a finding that the physician is the applicant's attending physician. The Authority shall notify the applicant of the intent to review the medical records and request the applicant's authorization to conduct the review. Failure to authorize a review of medical records may result in the application being declared incomplete, or denial of an application. If the Authority is unable to verify that the applicant's attending physician meets the definition under OAR 333-008-0010(3) the applicant will be allowed 30 days to submit written documentation or a new attending physician's declaration from a physician meeting the requirements of these rules. Failure to submit the required attending physician documentation is grounds for denial under ORS 475.309 and OAR 333-008-0030;

(E) Contacting the Division of Medical Assistance Programs, Department of Human Services-Self Sufficiency, or the Social Security Administration (SSA) to verify eligibility for benefits; and

(F) Conducting a criminal records check under ORS 181.534 of any person whose name is submitted as a grower.

(3) Application fees.

(a) A non-refundable application fee of \$200 is required at the time of application.

(b) If applicable as specified in OAR 333-008-0025, a non-refundable grow site registration fee of \$50 is required at the time of application.

(c) An applicant who can demonstrate current receipt of SSI benefits, current eligibility for OHP benefits or current receipt of food stamp benefits through the Oregon SNAP program qualifies for a reduced non-refundable application fee.

(A) An applicant demonstrating receipt of SSI benefits by providing a copy of a current monthly SSI benefit card showing dates of coverage is entitled to a reduced application fee of \$20.

(B) An applicant demonstrating current eligibility for OHP benefits by providing a copy of the applicant's current eligibility statement is entitled to a reduced application fee of \$50.

(C) An applicant demonstrating receipt of current food stamp benefits, verified by enrollment in Oregon's Food Stamp Management Information System database system and by providing current proof of his or her food stamp benefits, is entitled to a reduced application fee of \$60.

(D) An applicant who falls within one of the categories listed in subparagraph (i) or (ii) of this paragraph and who provides a copy of the applicable determination from the United States Department of Veteran's Affairs (VA), is entitled to a reduced application fee of \$20:

(i) Receives service-connected compensation from the VA based on a finding by the VA of 100% service-connected disability; or

(ii) Receives a needs-based pension from the VA based on a finding by the VA of non-service connected disability.

(d) The Authority shall place a 10-day hold on the issuance of a registry identification card for an application accompanied by a personal

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check. Upon receipt by the Authority of a notice of non-sufficient funds (NSF) or stop payment, an applicant will be allowed 14 days to submit payment in the form of a bank check or cash. Application fees paid in the form of cash must be hand-delivered. Applicants are advised not to make payments in cash through the United States mail or private delivery services. The Authority will not accept responsibility for payments of cash that are lost in the mail or stolen in transit.

(e) The Authority shall notify an applicant who submits a reduced application fee for which the applicant is not eligible and will allow the applicant 14 days from the date of notice to pay the correct application fee and submit a current valid proof of eligibility.

(4) The application forms referenced in this rule may be obtained by contacting the Oregon Medical Marijuana Program (OMMP) at PO Box 14450, Portland, OR 97293-0450 or by calling 971-673-1234.

Stat. Auth.: ORS 475.338

Stats. Implemented: ORS 475.300 - 475.346

Hist.: OHD 3-1999, f. & cert. ef. 4-29-99; OHD 13-2000(Temp), f. & cert. ef. 12-21-00 thru 6-15-01; OHD 18-2001, f. & cert. ef. 8-9-01; OHD 19-2001(Temp), f. & cert. ef. 8-10-01 thru 1-31-02; Administrative correction 3-14-02; OHD 6-2002, f. & cert. ef. 3-25-02; PH 9-2003, f. 6-26-03, cert. ef. 7-1-03; PH 38-2004, f. 12-22-04, cert. ef. 1-1-05; PH 17-2005, f. 11-25-05, cert. ef. 12-1-05; PH 18-2005, f. 12-30-05, cert. ef. 1-1-06; PH 15-2007, f. 12-19-07, cert. ef. 1-1-08; PH 14-2010(Temp), f. & cert. ef. 7-6-10 thru 12-31-10; PH 27-2010, f. & cert. ef. 12-28-10; PH 8-2011, f. 9-30-11, cert. ef. 10-1-11; PH 9-2013(Temp), f. & cert. ef. 10-2-13 thru 3-30-14; PH 1-2014, f. & cert. ef. 1-13-14; PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14; PH 16-2014, f. & cert. ef. 6-5-14; PH 20-2014, f. & cert. ef. 7-11-14

## 333-008-0025

### Marijuana Grow Site Registration

(1) A patient may register a marijuana grow site with the Authority. The address of a medical marijuana facility may not be listed by a patient on the grow site application as the location of the marijuana grow site. The Authority will register only one grow site per patient, and will only register grow sites in Oregon.

(2) To register a marijuana grow site, an applicant or patient must submit to the Authority an application, prescribed by the Authority, that includes:

- (a) The name of the grower;
- (b) The date of birth of the grower;
- (c) The physical address of the marijuana grow site where marijuana is to be produced;
- (d) The mailing address of the grower;
- (e) The registry identification card number of the patient, if known, for whom the marijuana is being produced; and

(f) A non-refundable grow site registration fee of \$50 in the form of cash, bank check, money order, or personal check. If the grower is the applicant, he or she is not required to pay the grow site registration fee. The Authority shall place a 10-day hold on the issuance of a registry identification card for an application accompanied by a personal check. Upon receipt by the Authority of a notice of non-sufficient funds (NSF) or stop payment, an applicant will be allowed 14 days to submit payment in the form of a bank check or cash. Application fees paid in the form of cash must be hand-delivered. Applicants are advised not to make payments in cash through the United States mail or private delivery services. The Authority will not accept responsibility for payments of cash that are lost in the mail or stolen in transit.

(3) The Authority shall conduct a criminal background check on the grower as authorized under ORS 475.304.

(a) A person convicted of a Class A or Class B felony under ORS 475.752 to 475.920 for the manufacture or delivery of a controlled substance in Schedule I or Schedule II, if the offense occurred on or after January 1, 2006, may not be issued a marijuana grow site registration card or produce marijuana for a registry identification cardholder for five years from the date of conviction.

(b) A person convicted more than once of a Class A or Class B felony under ORS 475.752 to 475.920 for the manufacture or delivery of a controlled substance in Schedule I or Schedule II, if the offenses occurred after January 1, 2006, may not be issued a marijuana grow site registration card or produce marijuana for a registry identification cardholder.

(c) The Authority shall notify a patient by certified mail that the grower is ineligible and the patient will be allowed the opportunity to identify another grower.

(4) The Authority shall issue a marijuana grow site registration card to a patient who has met the requirements of section (2) of this rule, unless the grower is disqualified under section (3) of this rule.

(5) A grower must display a marijuana grow site registration card for each patient for whom marijuana is being produced, at the marijuana grow site at all times.

(6) All usable marijuana, plants, seedlings and seeds, associated with the production of marijuana for a patient by a grower, are the property of the patient and must be provided to the patient, or, if the marijuana is usable marijuana or an immature marijuana plant, transferred to a registered medical marijuana facility, upon request.

(7) All marijuana produced for a patient must be provided to the patient or designated primary caregiver when the grower ceases producing marijuana for the patient.

(8) A grower must return the grow site registration card to the patient to whom the card was issued when requested to do so by the patient or when the grower ceases producing marijuana for the patient.

(9) A patient or the designated primary caregiver of the patient may reimburse the grower for the costs of supplies and utilities associated with production of marijuana for patient. No other costs associated with the production of marijuana for the patient, including the cost of labor, may be reimbursed.

(10) A grower may produce marijuana for no more than four patients or designated primary caregivers concurrently.

(11) The Authority may not register a grow site if the location of the grow site is the same location as a medical marijuana facility.

Stat. Auth.: ORS 475.338

Stats. Implemented: ORS 475.300 - 475.346

Hist.: PH 18-2005, f. 12-30-05, cert. ef. 1-1-06; PH 15-2007, f. 12-19-07, cert. ef. 1-1-08; PH 8-2011, f. 9-30-11, cert. ef. 10-1-11; PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14; PH 20-2014, f. & cert. ef. 7-11-14

## 333-008-0045

### Interim Changes

(1) A patient shall notify the Authority within 30 calendar days of any change in the patient's name, address, telephone number, attending physician, designated primary caregiver, grower or grow site address.

(2) A patient shall notify, as applicable, the designated primary caregiver, the grower, and the person responsible for a medical marijuana facility of any changes in status including, but not limited to:

- (a) The assignment of another individual as the designated primary caregiver for the patient;
- (b) The assignment of another individual as a grower for the patient;
- (c) The revocation of an Authorization to Transfer form under OAR 333-008-1230; or
- (d) The end of eligibility of the patient to hold a registry identification card.

(3) If the Authority is notified by the patient that a designated primary caregiver or a grower has changed, the Authority shall notify the designated primary caregiver or the grower by mail at the address of record confirming the change in status and informing the caregiver or grower that their card is no longer valid and must be returned to the Authority within seven calendar days.

(4) A patient who has been diagnosed by an attending physician as no longer having a debilitating medical condition or whose attending physician has determined that the medical use of marijuana is contraindicated for the patient's debilitating medical condition shall return the registry identification card and all associated OMMP cards to the Authority within 30 calendar days of notification of the diagnosis or notification of the contraindication. If, due to circumstances beyond control of the patient he or she is unable to obtain a second medical opinion about the patient's continuing eligibility to use medical marijuana before the 30-day period has expired, the Authority may grant the patient additional time to obtain a second opinion before requiring the patient to return the registry identification card and all associated cards.

(5) Change forms may only be submitted to the Authority via mail or in person at the OMMP office.

(6) If a patient's designated primary caregiver, grower or grow site has changed, the non-refundable fee to receive a replacement card is \$100. If the patient qualifies for the reduced application fee of \$20, the non-refundable fee to receive a replacement card is \$20.

(7) If a patient is registering a new grow site at any time other than when submitting a new application or a renewal application, a grow site registration fee will not be charged.

Stat. Auth.: ORS 475.309 & 475.312

Stats. Implemented: ORS 475.309 & 475.312

Hist.: PH 27-2010, f. & cert. ef. 12-28-10; PH 8-2011, f. 9-30-11, cert. ef. 10-1-11; PH 1-2014, f. & cert. ef. 1-13-14; PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14; PH 20-2014, f. & cert. ef. 7-11-14

## 333-008-0050

### Confidentiality

(1) The Authority shall create and maintain either paper or computer data files of patients, designated primary caregivers, growers, and grow site

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addresses. The data files shall include all information collected on the application forms or equivalent information from other written documentation, plus a copy of OMMMP registry identification cards, effective date, date of issue, and expiration date. Except as provided in section (2) of this rule, the names and identifying information of registry identification cardholders and the name and identifying information of a pending applicant for a card, a designated primary caregiver, a grower, and a marijuana grow site location, shall be confidential and not subject to public disclosure.

(2) Names and other identifying information made confidential under section (1) of this rule may be released to:

(a) Authorized employees of the Authority as necessary to perform official duties of the Authority, including the production of any reports of aggregate (i.e., non-identifying) data or statistics;

(b) Authorized employees of state or local law enforcement agencies when they provide a specific name or address. Information will be supplied only as necessary to verify:

(A) That a person is or was a lawful possessor of a registry identification card;

(B) That a person is or was a person responsible for a registered medical marijuana facility;

(C) That the address is or was a documented grow site, and how many people are authorized to grow at that grow site;

(D) How many people a person was or is authorized to grow for; or

(E) That an address is or was the location of a registered medical marijuana facility.

(c) Other persons (such as, but not limited to, employers, lawyers, family members) upon receipt of a properly executed release of information signed by the patient, the patient's parent or legal guardian, designated primary caregiver or grower. The release of information must specify what information the Authority is authorized to release and to whom.

Stat. Auth.: ORS 475.338

Stats. Implemented: ORS 475.300 - 475.346

Hist.: OHD 3-1999, f. & cert. ef. 4-29-99; OHD 18-2001, f. & cert. ef. 8-9-01; OHD 19-2001(Temp), f. & cert. ef. 8-10-01 thru 1-31-02; Administrative correction 3-14-02; OHD 6-2002, f. & cert. ef. 3-25-02; PH 18-2005, f. 12-30-05, cert. ef. 1-1-06; PH 15-2007, f. 12-19-07, cert. ef. 1-1-08; PH 21-2010, f. & cert. ef. 9-13-10; PH 8-2011, f. 9-30-11, cert. ef. 10-1-11; PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14; PH 20-2014, f. & cert. ef. 7-11-14

## 333-008-0120

### System to Allow Verification of Data at All Times

(1) The Authority shall establish an interactive method to allow authorized employees of state and local law enforcement agencies to use the Oregon State Police Law Enforcement Data System (LEDS) to query an OMMMP data file in order to verify at any time whether a particular patient, designated primary caregiver, grower, person responsible for a medical marijuana facility, grow site location, or medical marijuana facility is listed or registered with the Authority.

(2) LEDS access will only allow a yes or no answer to the query and the information obtained may not be used for any other purpose other than verification.

(3) The Authority may allow the release of reports related to verification if it is without identifying data.

(4) The Authority shall have staff available by phone to verify law enforcement agency employee questions during regular business hours in case the electronic verification system is down, and in the event the system is expected to be down for more than two business days, the Authority shall ensure program staff are available by phone for verification purposes.

Stat. Auth.: ORS 475.338

Stats. Implemented: ORS 475.300 - 475.346

Hist.: PH 18-2005, f. 12-30-05, cert. ef. 1-1-06; PH 15-2007, f. 12-19-07, cert. ef. 1-1-08; PH 8-2011, f. 9-30-11, cert. ef. 10-1-11; PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14; PH 20-2014, f. & cert. ef. 7-11-14

## 333-008-1000

### Applicability

(1) A person may not establish, conduct, maintain, manage or operate a facility on or after March 1, 2014, unless the facility has been registered by the Authority under these rules.

(2) Nothing in these rules exempts a PRF, an employee of a registered facility, or a registered facility from complying with any other applicable state or local laws.

(3) Registration of a facility does not protect a PRF or employees from possible criminal prosecution under federal law.

Stat. Auth.: ORS 475.314 & 475.338

Stats. Implemented: ORS 475.314

Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14; PH 20-2014, f. & cert. ef. 7-11-14

## 333-008-1010

### Definitions

For the purposes of OAR 333-008-1000 through 333-008-1290 the following definitions apply:

(1) "Agricultural land" means land that is located within an exclusive farm use zone as that term is described in ORS 215.203.

(2) "Attended primarily by minors" means that a majority of the students are minors.

(3) "Authority" means the Oregon Health Authority.

(4) "Batch" means a quantity of usable marijuana or a number of immature plants transferred at one time to a facility by a person authorized by a patient to transfer usable marijuana to a registered facility.

(5) "Career school" means any private proprietary professional, technical, business or other school instruction, organization or person that offers any instruction or training for the purpose or purported purpose of instructing, training or preparing persons for any profession at a physical location attended primarily by minors.

(6) "Conviction" means an adjudication of guilt upon a verdict or finding entered in a criminal proceeding in a court of competent jurisdiction.

(7)(a) "Designated primary caregiver" means an individual 18 years of age or older who has significant responsibility for managing the well-being of a person who has been diagnosed with a debilitating medical condition and who is designated as such on that person's application for a registry identification card or in other written notification to the Authority.

(b) "Designated primary caregiver" does not include the person's attending physician.

(8) "Domicile" means the place of abode of an individual where the person intends to remain and to which, if absent, the individual intends to return.

(9) "Edible" means a product made with marijuana that is intended for ingestion.

(10) "Elementary school" means a learning institution containing any combination of grades Kindergarten through 8 or age level equivalent.

(11)(a) "Employee" means any person, including aliens, employed for remuneration or under any contract of hire, written or oral, express or implied, by an employer.

(b) "Employee" does not include a person who volunteers or donates services performed for no remuneration or without expectation or contemplation of remuneration as the adequate consideration for the services performed for a religious or charitable institution or a governmental entity.

(12) "Facility" means a medical marijuana facility.

(13) "Farm use" has the meaning given that term in ORS 215.203.

(14) "Finished product" means a product infused with usable marijuana that is intended for use, ingestion or consumption other than by smoking, including but not limited to edible products, ointments, and tinctures.

(15) "Grower" has the same meaning as "person responsible for a marijuana grow site."

(16) "Grow site" means a specific location registered by the Authority and used by the grower to produce marijuana for medical use by a specific patient.

(17)(a) "Immature marijuana plant or immature plant" means a marijuana plant that has no flowers, is less than 12 inches in height, and less than 12 inches in diameter.

(b) A seedling or start that does not meet all three criteria in subsection (16)(a) is a mature plant.

(18) "Macroscopic screening" means visual observation without the aid of magnifying lens(es).

(19) "Microscopic screening" means visual observation with a minimum magnification of 40x.

(20) "Minor" means an individual under the age of 18.

(21) "Oregon Medical Marijuana Program" or "OMMP" means the program operated and administered by the Authority that registers patients, designated primary caregivers, and growers.

(22) "Patient" has the same meaning as "registry identification cardholder."

(23) "Person" means an individual.

(24) "Person responsible for a marijuana grow site" means a person who has been selected by a patient to produce medical marijuana for the patient, and who has been registered by the Authority for this purpose and has the same meaning as "grower".

(25) "Person responsible for a medical marijuana facility" or "PRF" means an individual who owns, operates, or otherwise has legal responsibility for a facility and who meets the qualifications established in these rules and has been approved by the Authority.

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(26) "Pesticide" means any substance or mixture of substances, intended to prevent, destroy, repel, or mitigate any pest.

(27) "Premises" means a location registered by the Authority under these rules and includes all areas at the location that are used in the business operated at the location, including offices, kitchens, rest rooms and storerooms, including all public and private areas where individuals are permitted to be present.

(28) "Random sample" means an amount of usable marijuana taken from a batch in which different fractions of the usable marijuana have an equal probability of being represented.

(29) "Registry identification cardholder" means a person who has been diagnosed by an attending physician with a debilitating medical condition and for whom the use of medical marijuana may mitigate the symptoms or effects of the person's debilitating medical condition, and who has been issued a registry identification card by the Authority.

(30) "Remuneration" means compensation resulting from the employer-employee relationship, including wages, salaries, incentive pay, sick pay, compensatory pay, bonuses, commissions, stand-by pay, and tips.

(31) "Resident" means an individual who has a domicile within this state.

(32) "Safe" means a metal receptacle with a locking mechanism capable of storing all usable marijuana at a registered facility that is rendered immobile by being securely anchored to a permanent structure of the building, or a "vault".

(33) "Secondary school" means a learning institution containing any combination of grades 9 through 12 or age level equivalent and includes those institutions that provide junior high schools which include 9th grade.

(34) "These rules" means OAR 333-008-1000 through 333-008-1400.

(35) "Usable marijuana" has the meaning given that term is ORS 475.302 and includes "finished product".

(36) "Valid testing methodology" means a scientifically valid testing methodology described in a published national or international reference and validated by the testing laboratory.

(37) "Vault" means an enclosed area that is constructed of steel-reinforced or block concrete and has a door that contains a multiple-position combination lock or the equivalent, a relocking device or equivalent, and a steel plate with a thickness of at least one-half inch.

Stat. Auth.: ORS 475.314 & 475.338

Stats. Implemented: ORS 475.314

Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14; PH 20-2014, f. & cert. ef. 7-11-14

## 333-008-1020

### Application for Medical Marijuana Facility Registration

(1) Beginning on March 3, 2014, at 8:30 a.m. Pacific Standard Time (PST), the Authority shall begin accepting applications for the registration of a facility. An application may be submitted at any time on or after March 3, 2014, at 8:30 a.m., PST.

(2) A PRF wishing to apply to register a facility must provide to the Authority:

- (a) An application on a form prescribed by the Authority;
- (b) Any additional documentation required by the Authority in accordance with these rules;
- (c) The applicable fee as specified in OAR 333-008-1030; and
- (d) Information and fingerprints required for a criminal background check in accordance with OAR 333-008-1130.

(3) An application for the registration of a facility must be submitted by a PRF electronically via the Authority's website, <http://mmj.oregon.gov>. The documentation required in subsection (2)(b) of this rule and the information and fingerprints described in subsection (2)(d) of this rule may be submitted electronically to the Authority or may be mailed but must be postmarked within five calendar days of the date the application was submitted electronically to the Authority or the application will be considered to be incomplete. Applicable fees must be paid online at the time of application.

(4) The Authority must review each application received to ensure the application is complete, that the required documentation has been submitted, and the fee paid. The Authority shall return an incomplete application to the person that submitted the application. A person may re-submit an application that was returned as incomplete at any time.

(5) Applications will be reviewed in the order they are received by the Authority. An application that is returned as incomplete must be treated by the Authority as if it was never received.

(6) A PRF who wishes to register more than one location must submit a separate application and application fee for each location.

(7) At the time of application the PRF will be asked, by the Authority, to sign an authorization permitting the Authority to publish the location of the facility if the facility is registered.

Stat. Auth.: ORS 475.314 & 475.338

Stats. Implemented: ORS 475.314

Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14; PH 20-2014, f. & cert. ef. 7-11-14

## 333-008-1030

### Fees

(1) The initial fees for the registration of a facility are:

- (a) A non-refundable application fee of \$500; and
- (b) A \$3,500 registration fee.

(2) The annual renewal fees for the registration of a facility are:

- (a) A \$500 non-refundable renewal fee; and
- (b) A \$3,500 registration fee.

(3) The Authority must return the registration fee if:

- (a) An application is returned to the applicant as incomplete;
- (b) The Authority denies an application; or
- (c) An applicant withdraws an application.

Stat. Auth.: ORS 475.314 & 475.338

Stats. Implemented: ORS 475.314

Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14; PH 20-2014, f. & cert. ef. 7-11-14

## 333-008-1040

### Application Review

(1) Once the Authority has determined that an application is complete it must review the application to determine compliance with ORS 475.314 and these rules.

(2) The Authority may, in its discretion, prior to acting on an application:

(a) Contact the applicant and request additional documentation or information; and

(b) Inspect the premises of the proposed facility.

(3) Prior to making a decision whether to approve or deny an application the Authority must:

(a) Ensure that the criminal background check process has been completed and review the results;

(b) Contact the OMMP and obtain documentation of whether the location of the facility is the same location as a registered grow site under OAR 333-008-0025;

(c) Review available records and information to determine whether the proposed facility is located within 1,000 feet of the real property comprising a public or private elementary, secondary or career school; and

(d) Review the list of registered facilities to determine whether any registered facilities are within 1,000 feet of the proposed facility.

(4) If during the review process the Authority determines that the application or supporting documentation contains intentionally false or misleading information the Authority must return the application to the applicant as incomplete.

Stat. Auth.: ORS 475.314 & 475.338

Stats. Implemented: ORS 475.314

Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14; PH 20-2014, f. & cert. ef. 7-11-14

## 333-008-1050

### Approval of Application

(1) If the proposed facility appears to be in compliance with ORS 475.314 and these rules, and the PRF has passed the criminal background check and is determined to reside in Oregon, the Authority must notify the applicant in writing that the application has been approved, that the facility is registered, and provide the applicant with proof of registration that includes a unique registration number.

(2) A facility that has been registered must display proof of registration in a prominent place inside the facility so that proof of registration is easily visible to individuals authorized to transfer usable marijuana and immature plants to the facility and individuals who are authorized to receive a transfer of usable marijuana and immature plants from the facility at all times when usable marijuana or immature plants are being transferred.

(3) A registered facility may not post any signs at the facility that use the Authority or the OMMP name or logo except to the extent that information is contained on the proof of registration.

(4) A facility's registration is only valid for the location indicated on the proof of registration and is only issued to the PRF that is listed on the application or subsequently approved by the Authority.

(5) A facility's registration may not be transferred to another location.

# ADMINISTRATIVE RULES

(6) If a proposed facility appears to be in compliance with ORS 475.314 and these rules except that the proposed facility does not yet have a security system installed and other security requirements in place, the Authority may issue a provisional registration that is valid for 60 days.

(a) In order to receive provisional registration a PRF must submit to the Authority at the time of application a floor plan of the facility that has marked and labeled all points of entry to the facility, all secure areas required by these rules and the proposed placement of all video cameras.

(b) The provisionally registered facility may not receive transfers of usable marijuana or immature plants or transfer usable marijuana or immature plants until the security system and other security requirements are in place and the Authority has approved the provisionally registered facility to begin operating.

(c) When the security system and other security requirements are in place the PRF must notify the Authority and if the Authority determines that the provisionally registered facility is in full compliance with these rules, the Authority must approve the facility for operation.

Stat. Auth.: ORS 475.314 & 475.338

Stats. Implemented: ORS 475.314

Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14; PH 20-2014, f. & cert. ef. 7-11-14

## 333-008-1060

### Denial of Application

(1) The Authority must deny an application if:

(a) An applicant fails to provide sufficient documentation that the proposed facility meets the qualifications for a facility in these rules; or

(b) The PRF has been:

(A) Convicted for the manufacture or delivery of a controlled substance in Schedule I or Schedule II within five years from the date the application was received by the Authority; or

(B) Convicted more than once for the manufacture or delivery of a controlled substance in Schedule I or Schedule II; or

(C) Prohibited by a court from participating in the OMMP.

(2) If the Authority intends to deny an application for registration it must issue a Notice of Proposed Denial in accordance with ORS 183.411 through 183.470.

Stat. Auth.: ORS 475.314 & 475.338

Stats. Implemented: ORS 475.314

Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14; PH 20-2014, f. & cert. ef. 7-11-14

## 333-008-1070

### Expiration and Renewal of Registration

(1) A facility's registration expires one year following the date of application approval.

(2) If a PRF wishes to renew the facility's registration, the person must submit to the Authority within 60 days of the registration's expiration:

(a) An application renewal form prescribed by the Authority;

(b) The required renewal fees;

(c) Forms required for the Authority to do a criminal background check on the PRF.

Stat. Auth.: ORS 475.314 & 475.338

Stats. Implemented: ORS 475.314

Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14; PH 20-2014, f. & cert. ef. 7-11-14

## 333-008-1080

### Notification of Changes

(1) A PRF must notify the Authority within 10 calendar days of any of the following:

(a) The person's conviction for the manufacture or delivery of a controlled substance in Schedule I or Schedule II;

(b) The issuance of a court order that prohibits the person from participating in the OMMP;

(c) A decision to change the PRF;

(d) A decision to permanently close the facility at that location;

(e) A decision to move to a new location;

(f) A change in the person's residency; and

(g) The location of an elementary, secondary or career school attended primarily by minors within 1,000 feet of the facility.

(2) The notification required in section (1) of this rule must include a description of what has changed and any documentation necessary for the Authority to determine whether the facility is still in compliance with ORS 474.314 and these rules including but not limited to, as applicable:

(a) A copy of the criminal judgment or order;

(b) A copy of the court order prohibiting the PRF from participating in the OMMP;

(c) The location of the school that has been identified as being within 1,000 feet of the facility; or

(d) The information required in OAR 333-008-1120 and 333-008-1130 to determine the residency of the new PRF and to perform the criminal background check.

(3) Failure of the PRF to notify the Authority in accordance with this rule may result in revocation of a facility's registration.

Stat. Auth.: ORS 475.314 & 475.338

Stats. Implemented: ORS 475.314

Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14; PH 20-2014, f. & cert. ef. 7-11-14

## 333-008-1090

### Required Closures

A facility may not receive transfers of usable marijuana or immature plants or transfer usable marijuana or immature plants if:

(1) The PRF is convicted for the manufacture or delivery of a controlled substance in Schedule I or Schedule II;

(2) The PRF changes and the Authority has not:

(a) Performed a criminal background check on the proposed PRF in accordance with OAR 333-008-1130;

(b) Determined whether the individual is a resident of Oregon; and

(c) Provided written approval that the new PRF meets the requirements of ORS 475.314.

(3) The PRF has been ordered by the court not to participate in the OMMP; or

(4) An elementary, secondary or career school attended primarily by minors is found to be within 1,000 of the registered facility.

Stat. Auth.: ORS 475.314 & 475.338

Stats. Implemented: ORS 475.314

Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14; PH 20-2014, f. & cert. ef. 7-11-14

## 333-008-1100

### Business Qualifications for Medical Marijuana Facility Registration

(1) A facility must be registered as a business or at the time of applying to register a facility have filed a pending application to register as a business with the Office of the Secretary of State.

(2) The Authority may not approve an application until it has verified that the facility is registered as a business with the Office of the Secretary of State.

Stat. Auth.: ORS 475.314 & 475.338

Stats. Implemented: ORS 475.314

Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14; PH 20-2014, f. & cert. ef. 7-11-14

## 333-008-1110

### Locations of Medical Marijuana Facilities

(1) In order to be registered a facility must be located in an area that is zoned by the local governing agency for commercial, industrial or mixed use or as agricultural land.

(2) Registration by the Authority is not a guarantee that a facility is permitted to operate under applicable land use or other local government laws where the facility is located.

(3) A facility may not be located:

(a) At the same address as a registered marijuana grow site;

(b) Within 1,000 feet of the real property comprising a public or private elementary, secondary or career school attended primarily by minors; or

(c) Within 1,000 feet of another medical marijuana facility;

(4) In order for the Authority to ensure compliance with this rule a PRF must submit with an initial application documentation that shows the current zoning for the location of the proposed facility.

(5) For purposes of determining the distance between a facility and a school referenced in subsection (3)(b) of this rule, "within 1,000 feet" means a straight line measurement in a radius extending for 1,000 feet or less in every direction from any point on the boundary line of the real property comprising an existing public or private elementary, secondary or career school primarily attended by minors.

(6) For purposes of determining the distance between a facility and another registered facility "within 1,000 feet" means a straight line measurement in a radius extending for 1,000 feet or less in every direction from any point on the boundary line of the real property comprising a registered facility.

(7) In order to be registered a facility must operate at a particular location as specified in the application and may not be mobile.

Stat. Auth.: ORS 475.314 & 475.338

Stats. Implemented: ORS 475.314

# ADMINISTRATIVE RULES

Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14; PH 20-2014, f. & cert. ef. 7-11-14

## 333-008-1120

### Person Responsible for a Medical Marijuana Facility (PRF)

(1) A PRF must:  
(a) Be a resident of Oregon. Residency may be proved by submitting to the Authority:

(A) An Oregon driver's license, an Oregon identification card that includes a photograph of the person, or a military identification card that includes a photograph of the person; and

(B) Copies of utility bills, rental receipts, mortgage statements or similar documents that contain the name and address of the domicile of the PRF.

(b) Have legal authority to act on behalf of the facility; and

(c) Be responsible for ensuring the facility complies with applicable laws, if registered.

(2) A PRF may not:

(a) Have been convicted in any state for the manufacture or delivery of a controlled substance in Schedule I or Schedule II within five years from the date of application; or

(b) Have been convicted more than once in any state for the manufacture or delivery of a controlled substance in Schedule I or Schedule II.

(3) At the time of application a PRF must submit to the Authority a copy of the information described in paragraphs (1)(a)(A) and (B) of this rule.

(4) A PRF is accountable for any intentional or unintentional action of its owners, officers, managers, employees or agents, with or without the knowledge of the PRF, who violate ORS 475.314 or these rules.

(5) If a PRF no longer meets the criteria of a PRF the Authority shall inform the PRF and the owner of the facility if different that:

(a) The PRF may no longer serve in that capacity;

(b) In order to remain certified, a change of PRF form must be submitted; and

(c) The facility may not operate until the Authority has approved a new PRF.

(6) If the Authority is notified that a change of PRF is needed, the current PRF is no longer able to serve as the PRF, or the PRF has been or will be removed by the owner of a facility, the owner of the facility must submit a change of PRF form to Authority within 10 business days of the notification or the Authority will begin proceedings to revoke the certification of the facility.

(7) If the PRF of record for the facility is no longer serving in that capacity the facility may not operate until a new PRF has been approved by the Authority.

Stat. Auth.: ORS 475.314 & 475.338

Stats. Implemented: ORS 475.314

Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14; PH 20-2014, f. & cert. ef. 7-11-14

## 333-008-1130

### Criminal Background Checks

(1) A PRF must, at the time of application, provide to the Authority:

(a) A criminal background check request form, prescribed by the Authority that includes but is not limited to:

(A) First, middle and last name;

(B) Any aliases;

(C) Date of birth;

(D) Driver's license information; and

(E) Address and recent residency information.

(b) Fingerprints in accordance with the instructions on the Authority's webpage: <http://mmj.oregon.gov>.

(2) The Authority may request that the PRF disclose his or her Social Security Number if notice is provided that:

(a) Indicates the disclosure of the Social Security Number is voluntary; and

(b) That the Authority requests the Social Security Number solely for the purpose of positively identifying the PRF during the criminal records check process.

(3) The Authority shall conduct a criminal records check in order to determine whether the PRF has been convicted of the manufacture or delivery of a controlled substance in Schedule I or Schedule II in any state.

(4) The Authority must conduct a criminal background check in accordance with this rule on a PRF every year at the time of application renewal.

(5) If a PRF wishes to challenge the accuracy or completeness of information provided by the Department of State Police, the Federal

Bureau of Investigation and agencies reporting information to the Department of State Police or Federal Bureau of Investigation, those challenges must be made through the Department of State Police, Federal Bureau of Investigation or reporting agency and not through the contested case process specified in OAR 333-008-1060(2).

Stat. Auth.: ORS 475.314 & 475.338

Stats. Implemented: ORS 475.314

Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14; PH 20-2014, f. & cert. ef. 7-11-14

## 333-008-1140

### Security for Registered Facilities

(1) The PRF must ensure that a registered facility complies with OAR 333-008-1140 through 333-008-1180.

(2) The PRF is responsible for the security of all usable marijuana and immature plants in the registered facility, including providing adequate safeguards against theft or diversion of usable marijuana and immature plants and records that are required to be kept.

(3) The PRF must ensure that commercial grade, non-residential door locks are installed on every external door at a registered facility prior to opening for business and used while a facility is registered.

(4) During all hours when the registered facility is open for business, the PRF must ensure that:

(a) All usable marijuana and immature plants received and all usable marijuana and immature plants available for transfer to a patient or a designated primary caregiver are kept in a locked, secure area that can only be accessed by authorized personnel.

(b) All areas where usable marijuana or immature plants are received for transfer by a registered facility are identified as a restricted access area by posting a sign not less than 12 inches wide and 12 inches long, composed of letters not less than one-half inch in height that reads, "Restricted Access Area — Authorized Personnel Only".

(c) All areas where usable marijuana or immature plants are available for transfer to a patient or designated primary caregiver are:

(A) Identified as a restricted access area and clearly identified by the posting of a sign not less than 12 inches wide and 12 inches long, composed of letters not less than one-half inch in height that reads "Restricted Access Area — No Minors Allowed";

(B) Supervised by the PRF or an employee of the registered facility at all times when a patient or designated primary caregiver is present; and

(C) Separate from any area where usable marijuana or immature plants are being transferred to a registered facility.

(5) During all hours when the registered facility is not open for business the PRF must ensure that:

(a) All entrances to and exits from the facility are securely locked and any keys or key codes to the facility remain in the possession of the PRF or authorized employees;

(b) All usable marijuana is kept in a safe; and

(c) All immature plants are in a locked room.

(6) The PRF must ensure that:

(a) Electronic records are encrypted, and securely stored to prevent unauthorized access and to ensure confidentiality;

(b) There is an electronic back-up system for all electronic records; and

(c) All video recordings and archived required records not stored electronically are kept in a locked storage area. Current records may be kept in a locked cupboard or desk outside the locked storage area during hours when the registered facility is open.

Stat. Auth.: ORS 475.314 & 475.338

Stats. Implemented: ORS 475.314

Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14; PH 20-2014, f. & cert. ef. 7-11-14

## 333-008-1150

### Alarm System for Registered Facilities

(1) Prior to opening for business, a PRF must ensure that a registered facility has a security alarm system, installed by an alarm installation company, on all facility entry or exit points and perimeter windows.

(2) At the time of application a PRF must submit to the Authority documentation of the:

(a) Alarm system that is installed or proposed for installation;

(b) Company that installed the system or plans to install the system;

(c) Features of the system that meet the criteria of this rule.

(3) A PRF must ensure that the facility is continuously monitored by the alarm system.

(4) The security alarm system for the registered facility must:

(a) Be able to detect movement inside the registered facility;

# ADMINISTRATIVE RULES

(b) Be programmed to notify a security company that will notify the PRF or his or her designee in the event of a breach; and

(c) Have at least two “panic buttons” located inside the registered facility that are linked with the alarm system.

Stat. Auth.: ORS 475.314 & 475.338

Stats. Implemented: ORS 475.314

Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14; PH 20-2014, f. & cert. ef. 7-11-14

## 333-008-1160

### Video Surveillance Equipment for Registered Facilities

(1) Prior to opening for business, a PRF must install a fully operational video surveillance recording system.

(2) At the time of application a PRF must submit to the Authority documentation of the:

(a) Video surveillance system that is installed or proposed for installation;

(b) Company or person that installed the system or plans to install the system;

(c) Features of the system that meet the criteria of this rule.

(3) Video surveillance equipment must, at a minimum:

(a) Consist of:

(A) Digital or network video recorders;

(B) Cameras capable of meeting the requirements of OAR 333-008-1170 and this rule;

(C) Video monitors;

(D) Digital archiving devices; and

(E) A color printer capable of producing still photos.

(b) Be equipped with a failure notification system that provides prompt notification to the PRF or employees of any prolonged surveillance interruption or failure; and

(c) Have sufficient battery backup to support a minimum of one hour of recording time in the event of a power outage.

(4) All video surveillance equipment and recordings must be stored in a locked secure area that is accessible only to the PRF, authorized employees of the registered facility and the Authority.

Stat. Auth.: ORS 475.314 & 475.338

Stats. Implemented: ORS 475.314

Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14; PH 20-2014, f. & cert. ef. 7-11-14

## 333-008-1170

### Required Camera Coverage and Camera Placement for Registered Facilities

(1) A PRF must ensure that a registered facility has camera coverage for:

(a) All secure and restricted access areas described in OAR 333-008-1140;

(b) All point of sale areas;

(c) All points of entry to or exit from secure and restricted access areas; and

(d) All points of entry to or exit from the registered facility.

(2) A PRF must ensure that camera placement is capable of identifying activity occurring within 15 feet of all points of entry to the registered facility and exit from the registered facility and shall allow for the clear and certain identification of any individual and activities on the facility premises.

Stat. Auth.: ORS 475.314 & 475.338

Stats. Implemented: ORS 475.314

Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14; PH 20-2014, f. & cert. ef. 7-11-14

## 333-008-1180

### Video Recording Requirements for Registered Facilities

(1) The PRF must ensure that all camera views of all secure and restricted access areas and points of entry to or exit from the registered facility are continuously monitored by motion sensor video equipment or similar technology 24 hours a day.

(2) A PRF must ensure that:

(a) All surveillance recordings are kept for a minimum of 30 days and are in a format that can be easily accessed for viewing;

(b) The surveillance system has the capability to produce a color still photograph from any camera image;

(c) The date and time is embedded on all surveillance recordings without significantly obscuring the picture;

(d) Video recordings are archived in a format that ensures authentication of the recording as a legitimately-captured video and guarantees that no alterations of the recorded image has taken place; and

(e) Video surveillance records and recordings are available upon request to the Authority for the purpose of ensuring compliance with ORS 475.314 and these rules.

Stat. Auth.: ORS 475.314 & 475.338

Stats. Implemented: ORS 475.314

Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14; PH 20-2014, f. & cert. ef. 7-11-14

## 333-008-1190

### Testing

(1) A PRF must ensure that usable marijuana and immature plants are tested for pesticides, mold and mildew in accordance with this rule prior to the usable marijuana or immature plants being transferred to a patient or a designated primary caregiver.

(2) Upon usable marijuana being transferred to a registered facility in accordance with OAR 333-008-1230, the PRF must ensure the usable marijuana is segregated into batches, that each batch is placed in an individual container or bag, and that a label is attached to the container or bag that includes at least the following information:

(a) A unique identifier;

(b) The name of the person who transferred it; and

(c) The date the usable marijuana was received by the registered facility.

(3) Sampling. A PRF must ensure that random samples from each batch are taken in an amount necessary to conduct the applicable test, that the samples are labeled with the batch's unique identifier, and submitted for testing.

(4) Testing. A PRF must ensure that each sample is tested for pesticides, mold, and mildew and for an analysis of the levels of tetrahydrocannabinol (THC) and Cannabidiol (CBD).

(a) Immature Plants. An immature plant may be tested for pesticides, mold or mildew by conducting a macroscopic or microscopic screening to determine if the plant has visible pesticide residue, mold or mildew.

(b) Flowers or other usable marijuana plant material. Usable marijuana in the form of flowers or other plant material must be:

(A) Tested for pesticides, mold and mildew using valid testing methodologies and macroscopic or microscopic screening may not be used;

(B) Tested for pesticides by testing for the following analytes:

(i) Chlorinated Hydrocarbons;

(ii) Organophosphates;

(iii) Carbamates; and

(iv) Pyrethroids; and

(C) Analyzed, using valid testing methodologies, to determine the levels of THC and CBD.

(c) Edibles, Liquids and Solid Extracts. If the usable marijuana used in the edible, liquid or solid extract has been tested in accordance with this rule and tested negative for pesticides, mold or mildew, the edible, liquid or solid extract does not need to be tested for pesticides, mold and mildew but does need to be tested for an analysis of the levels of THC and CBD. If the usable marijuana used in the edible, liquid, or solid extract was not tested in accordance with this rule, the edible, liquid or solid extract must be tested for pesticides, mold or mildew in accordance with subsection (4)(b) of this rule.

(5) Laboratory Requirements. A PRF must ensure that all testing, except for testing of immature plants, is done by a third party or in-house laboratory that:

(a) Uses valid testing methodologies; and

(b) Has a Quality System for testing of pesticides, mold and mildew that is compliant with the:

(A) 2005 International Organization for Standardization 17025 Standard; or

(B) 2009 National Environmental Laboratory Accreditation Conference Institute TNI Standards.

(6) Macroscopic or microscopic screening of immature plants must be conducted by a person who has a minimum of a bachelor's degree in horticulture, botany, plant pathology, microbiology, or an equivalent degree but is not required to be done by a laboratory.

(7) Testing Results. A laboratory must provide testing results to the PRF signed by an official of the laboratory who can attest to the accuracy of the results, and that includes the levels of pesticides, mold or mildew detected and the levels of THC and CBD.

(a) If an immature plant has visible pesticide residue, mold or mildew it must be deemed to test positive and must be returned to the person who transferred the immature plant to the registered facility.

# ADMINISTRATIVE RULES

(b) A sample of usable marijuana shall be deemed to test positive for mold and mildew if the sample has levels that exceed the maximum acceptable counts in Appendix A.

(c) A sample of usable marijuana shall be deemed to test positive for pesticides with a detection of more than 0.1 parts per million of any pesticide.

(8) If an immature plant or sample of usable marijuana tests positive for pesticides, mold or mildew based on the standards in this rule the PRF must ensure the entire batch from which the sample was taken is returned to the person who transferred the immature plant or usable marijuana to the registered facility and must document how many or how much was returned, to whom, and the date it was returned.

(9) A registered facility may perform its own testing as long as the testing complies with this rule.

(10) The PRF may permit laboratory personnel or other persons authorized to do testing access to secure or restricted access areas of the registered facility where usable marijuana or immature plants are stored. The PRF must log the date and time in and out of all such persons.

Stat. Auth.: ORS 475.314 & 475.338

Stats. Implemented: ORS 475.314

Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14; PH 8-2014(Temp), f. 2-19-14, cert. ef. 2-21-13 thru 7-13-14; PH 20-2014, f. & cert. ef. 7-11-14

## 333-008-1200

### Operation of Registered Facilities

(1) A PRF must ensure that a registered facility does not permit:

(a) A minor to be present in any area of a registered facility where usable marijuana or immature plants are present, even if the minor is a patient or an employee; and

(b) Consumption, ingestion, inhalation or topical application of usable marijuana anywhere on the premises of the registered facility, except that an employee of a registered facility who is a patient may consume usable marijuana during their work shift as necessary for his or her medical condition, in a closed room, alone if the usable marijuana is being smoked, not visible to the public or to patients or caregivers on the premises of the registered facility to receive a transfer of usable marijuana or an immature plant.

(2) A PRF must ensure that a registered facility uses an Oregon Department of Agriculture approved scale to weigh all usable marijuana.

(3) The following persons are the only persons permitted in any area of a registered facility where usable marijuana or immature plants are present, and only in accordance with these rules, as applicable:

(a) A PRF;

(b) An owner of a registered facility;

(c) An employee of the registered facility;

(d) Laboratory personnel in accordance with OAR 333-008-1190;

(e) A contractor authorized by the PRF to be on the premises of a registered facility;

(f) A patient, designated primary caregiver, or growers;

(g) An authorized employee or authorized contractor of the Authority; and

(h) Other government officials that have jurisdiction over some aspect of the registered facility or that otherwise have authority to be on the premises of the registered facility.

(4) A PRF must have written detailed policies and procedures and training for employees on the policies and procedures that at a minimum, cover the following:

(a) Security;

(b) Testing;

(c) Transfers of usable marijuana and plants to and from the facility;

(d) Operation of a registered facility;

(e) Required record keeping;

(f) Labeling; and

(g) Violations and enforcement.

Stat. Auth.: ORS 475.314 & 475.338

Stats. Implemented: ORS 475.314

Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14; PH 20-2014, f. & cert. ef. 7-11-14

## 333-008-1210

### Record Keeping

(1) A PRF must ensure that the following information is documented and maintained electronically in a manner that can easily be shared with the Authority or accessed by the Authority:

(a) All Authorization to Transfer forms, including the date on which a form was received;

(b) Any written notifications from a patient with regard to any change in status as required by ORS 475.309(7)(a)(B) or (10)(a);

(c) Any revocation of an Authorization to Transfer form;

(d) All transfer information required in OAR 333-008-1230 and 333-008-1240;

(e) Documentation of the costs of doing normal and customary business used to establish the reimbursement amounts for transfers of usable marijuana or immature plants, including costs related to transferring, handling, securing, insuring, testing, packaging and processing usable marijuana and immature marijuana plants and the cost of supplies, utilities and rent or mortgage.

(f) The amount of money paid by a registered facility to a grower for each transfer of usable marijuana or immature plants;

(g) The amount of money paid by each patient or designated primary caregiver for a transfer of usable marijuana or an immature plant;

(h) The laboratory reports of all testing and other information required to be documented in OAR 333-008-1190; and

(i) All other information required to be documented and retained in these rules.

(2) The PRF must ensure that information required to be documented pursuant to section (1) of this rule is maintained in a safe and secure manner that protects the information from unauthorized access, theft, fire, or other destructive forces, and is easily retrievable for inspection by the Authority upon request, either at the registered facility or online.

(3) A PRF must ensure that a registered facility uses an electronic data management system for the recording of transfers of usable marijuana and immature plants. The system must meet the following minimum requirements:

(a) Record the information required to be documented in this rule and OAR 333-008-1230 and 333-008-1240;

(b) Provide for off-site or secondary backup system;

(c) Assign a unique transaction number for each transfer to or from the registered facility;

(d) Monitor date of testing and testing results;

(e) Track products by unique transaction number through the transfer in, testing and transfer out processes;

(f) Generate transaction and other reports requested by the Authority viewable in PDF format;

(g) Produce reports, including but not limited to inventory reports; and

(h) Provide security measures to ensure patient and grower records are kept confidential.

(4) Documents and information required to be maintained in these rules must be retained by the PRF for at least one year.

(5) A PRF must provide the Authority with any documentation required to be maintained in these rules upon request, in the format requested by the Authority, or permit the Authority access to such documentation on-site.

Stat. Auth.: ORS 475.314 & 475.338

Stats. Implemented: ORS 475.314

Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14; PH 20-2014, f. & cert. ef. 7-11-14

## 333-008-1220

### Labeling

(1) Prior to transferring usable marijuana a PRF must ensure that a label is affixed to the usable marijuana that includes but is not limited to:

(a) The amount of THC and CBD in the usable marijuana;

(b) If pre-packaged, the weight or volume of the packaged usable marijuana in metric units;

(c) The amount of usable marijuana in a finished product in metric units;

(d) Potency information; and

(e) Who performed the testing.

(2) If the registered facility transfers usable marijuana in a form that is edible, the PRF must ensure that the usable marijuana has a warning label on the outside of the packaging that includes the following: "WARNING: MEDICINAL PRODUCT — KEEP OUT OF REACH OF CHILDREN" in bold capital letters, in a font size that is larger than the type-size of the other printing on the label such that it is easy to read and prominently displayed on the product.

Stat. Auth.: ORS 475.314 & 475.338

Stats. Implemented: ORS 475.314

Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14; PH 20-2014, f. & cert. ef. 7-11-14

# ADMINISTRATIVE RULES

## 333-008-1230

### Transfers to a Registered Facility

(1) A patient may authorize usable marijuana or immature marijuana plants to be transferred to a registered facility by signing an Authorization to Transfer form prescribed by the Authority. A patient may authorize transfers to more than one registered facility. A separate form must be provided for each registered facility. The Authorization must include, but is not limited to, the following information:

(a) The patient's name, OMMP card number and expiration date and contact information;

(b) The name and contact information of the individual who is authorized to transfer the usable marijuana or immature marijuana plants to the registered facility and that individual's OMMP card number and expiration date;

(c) The name and address of the registered facility that is authorized to receive the usable marijuana or immature marijuana plants; and

(d) The date the authorization expires, if earlier than the expiration date of the patient's OMMP card.

(2) Only a patient, the patient's designated primary caregiver, or the patient's grower may be authorized to transfer usable marijuana or immature plants to a registered facility.

(3) The original Authorization to Transfer form must be provided to the registered facility to which a transfer may be made by the patient or person authorized to transfer the usable marijuana or immature plants. The patient should retain a copy of the Authorization to Transfer form for his or her records and provide a copy to the person authorized to transfer the usable marijuana or immature plants.

(4) An Authorization to Transfer form automatically expires on the date the patient's OMMP card expires, unless the patient has specified an earlier expiration date. If the patient renews his or her OMMP card the patient may execute a new Authorization to Transfer form in accordance with this rule.

(5) Once usable marijuana or an immature plant is transferred to a registered facility pursuant to a valid Authorization to Transfer form, the usable marijuana or immature plant is no longer the property of the patient unless the usable marijuana or immature plants are returned by the registered facility.

(6) Prior to a registered facility accepting a transfer of usable marijuana or immature plants the PRF must ensure that:

(a) It has a valid Authorization to Transfer form on file that authorizes the individual that is transferring the usable marijuana or immature plants to make the transfer; and

(b) The individual transferring the usable marijuana or immature plants is the individual authorized to make the transfer.

(7) A PRF must ensure that when a registered facility accepts a transfer of usable marijuana or an immature plant the batch of usable marijuana and each immature plant are segregated in accordance with the testing rule, OAR 333-008-1190 and that the following information is documented, as applicable:

(a) The unique identifier;

(b) The weight in metric units of all usable marijuana received by the registered facility;

(c) The number of immature plants received by the registered facility;

(d) The amount of a finished product received by the registered facility, including, as applicable, the weight in metric units, or the number of units of a finished product;

(e) A description of the form the usable marijuana was in when it was received, for example, oil or an edible product;

(f) Who transferred the usable marijuana or the immature plant, the individual's OMMP card number and expiration date of the card, a copy of the individual's picture identification, the date the usable marijuana or an immature plant was received, and the name of the patient who authorized the transfer; and

(g) The amount of reimbursement paid by the registered facility.

(8) Nothing in these rules requires a PRF or a registered facility to accept a transfer of usable marijuana or immature plants.

(9) A PRF must ensure that:

(a) From the time that a batch or plant has been received by the registered facility until it is tested in accordance with these rules, the usable marijuana and immature plants are segregated, withheld from use, and kept in a secure location so as to prevent the marijuana or plants from becoming contaminated or losing efficacy, or from being tampered with or transferred except that samples may be removed for testing; and

(b) No usable marijuana or immature plants are transferred to a patient or designated primary caregiver until testing has been completed, the registered facility has received a written testing report, and the usable marijuana and immature plants have tested negative for pesticides, mold and mildew.

(10) Usable marijuana and immature plants must be kept on-site at the facility. The Authority may cite a PRF for a violation of these rules if during an inspection it cannot account for its inventory or if the amount of usable marijuana at the registered facility is not within five percent of the documented inventory.

Stat. Auth.: ORS 475.314 & 475.338

Stats. Implemented: ORS 475.314

Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14; PH 20-2014, f. & cert. ef. 7-11-14

## 333-008-1250

### Inspections

(1) The Authority must conduct an initial inspection of every registered facility within six months of approving an application to ensure compliance with these rules, and must conduct a routine inspection of every registered facility at least every year.

(2) The Authority may conduct a complaint inspection at any time following the receipt of a complaint that alleges a registered facility is in violation of ORS 475.314 or these rules.

(3) The Authority may conduct an inspection at any time if it believes, for any reason, that a registered facility or a PRF is in violation of ORS 475.314 or these rules.

(4) A PRF and any employees, contractors, or other individuals working at a registered facility must cooperate with the Authority during an inspection.

(5) If an individual at a registered facility fails to permit the Authority to conduct an inspection the Authority may seek an administrative warrant authorizing the inspection pursuant to ORS 431.262.

Stat. Auth.: ORS 431.262, 475.314 & 475.338

Stats. Implemented: ORS 431.262 & 475.314

Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14; PH 20-2014, f. & cert. ef. 7-11-14

## 333-008-1260

### Violations

(1) A registered facility is in violation of ORS 475.314 or these rules for:

(a) A PRF or an employee of a facility failing to cooperate with an inspection;

(b) The submission by a PRF of false or misleading information to the Authority in support of an application or in seeking to retain registration;

(c) Transferring usable marijuana or immature plants to an individual who is not a patient or a designated primary caregiver;

(d) Accepting a transfer of usable marijuana or immature plants without a valid authorization from the patient;

(e) Possessing a mature marijuana plant at the registered facility;

(f) Failing to document and maintain information in the manner required by these rules;

(g) Failing to account for usable marijuana or immature plants on the premises of the registered facility, taking into account a five percent loss;

(h) Failing to submit a plan of correction in accordance with OAR 333-008-1270;

(i) Failing to comply with a final order of the Authority, including failing to pay a civil penalty; or

(j) Failing to comply with ORS 475.314 or any of these rules.

(2) It is a violation of ORS 475.314 and these rules to operate a facility without being registered by the Authority.

Stat. Auth.: ORS 475.314 & 475.338

Stats. Implemented: ORS 475.314

Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14; PH 20-2014, f. & cert. ef. 7-11-14

## 333-008-1280

### Confidentiality

(1) Any criminal background information received by the Authority about a PRF during the criminal background check process is confidential and is not subject to disclosure without a court order.

(2) The name of a PRF and the address of a registered facility is confidential and is not subject to disclosure without a court order, except as provided in section (5) of this rule, or unless a PRF has authorized disclosure.

# ADMINISTRATIVE RULES

(3) If an application has been denied, the information submitted to the Authority in an application for registration of a facility is not confidential and may be subject to disclosure under ORS 192.410 through 192.505.

(4) A final order revoking the registration of a facility is not confidential and may be posted on the Authority's website or otherwise made public by the Authority.

(5) Authorized employees of state and local law enforcement agencies may verify with the Authority at all times whether:

- (a) A location is the location of a registered facility; or
- (b) A person is listed as the PRF of a registered facility.

Stat. Auth.: ORS 475.314 & 475.338

Stats. Implemented: ORS 475.314 & 475.331

Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14; PH 20-2014, f. & cert. ef. 7-11-14

## 333-008-1290

### Change of Location

(1) A registered facility that changes location must submit a new application that complies with OAR 333-008-1020.

(2) A facility may not operate at a new location unless it is registered by the Authority.

Stat. Auth.: ORS 475.314 & 475.338

Stats. Implemented: ORS 475.314

Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14; PH 20-2014, f. & cert. ef. 7-11-14

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## Oregon Health Insurance Exchange Chapter 945

**Rule Caption:** 2014 Administrative Charge on Insurers

**Adm. Order No.:** OHIE 4-2014(Temp)

**Filed with Sec. of State:** 7-9-2014

**Certified to be Effective:** 7-9-14 thru 12-31-14

**Notice Publication Date:**

**Rules Adopted:** 945-030-0025

**Subject:** Establishes the 2014 administrative charge to be paid by insurers offering medical and dental plans through the Exchange.

**Rules Coordinator:** Gregory Jolivet—(503) 373-9406

## 945-030-0025

### Annual Administrative Charge on Insurers

(1) Effective January 1, 2014, each health insurer offering qualified health plans through the Exchange shall pay a monthly administrative charge equal to \$9.38 times the number of members enrolled through the Exchange in that month.

(2) Effective January 1, 2014, each health insurer offering standalone dental plans through the Exchange shall pay a monthly administrative charge equal to \$0.93 times the number of members enrolled through the Exchange in that month.

(3) If the total charges collected exceed the maximum amount permissible under ORS 741.105, Cover Oregon will return excess funds to carriers on a pro-rata basis no later than the end of the 2nd quarter of the next calendar year.

Stat. Auth.: ORS 741.002

Stats. Implemented: ORS 741.105

Hist.: OHIE 4-2014(Temp), f. & cert. ef. 7-9-14 thru 12-31-14

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## Oregon Health Licensing Agency Chapter 331

**Rule Caption:** Repeal requirements that denturists must use heat sterilizing device and amend practical examinations.

**Adm. Order No.:** HLA 4-2014(Temp)

**Filed with Sec. of State:** 7-1-2014

**Certified to be Effective:** 7-1-14 thru 12-28-14

**Notice Publication Date:**

**Rules Amended:** 331-410-0050, 331-420-0020

**Subject:** The temporary rule suspends the requirement that all denturists purchase and use a heat sterilizing device by July 1, 2014.

Amend OAR 331-410-0050 to state "board approved practical examination" rather than a board administered examination to allow the Board to approve the National Denturist Association (NDA) administered practical and written examinations.

**Rules Coordinator:** Samantha Patnode—(503) 373-1917

## 331-410-0050

### Qualification and Requirements for Practical Examination

(1) To be qualified to take the board approved practical examination the individual must submit official transcripts and documentation of 1,000 hours supervised clinical practice listed in OAR 331-410-0035(3)(a);

(2) To be scheduled to take the board approved practical examination, applicants must submit a form prescribed by the Agency and pay required fees at least 60 calendar days prior to the examination date.

(3) A practical examination candidate must provide the following at the time of practical examination:

(a) Government issued photographic identification listed under OAR 331-030-0000 proving that the practical examination candidate is the individual scheduled to take the practical examination;

(b) Government issued identification proving the patient is 18 years of age. See identification options under ORS 331-030-0000;

(c) An oral health certificate for the patient signed by a dentist, physician, nurse practitioner or a licensed denturist with the oral pathology endorsement, within 30 days of the practical examination, stating the patient's oral cavity is substantially free from disease and mechanically sufficient to receive a denture; and

(d) Agency prescribed practical examination candidate and patient forms.

(4) The patient must be completely edentulous;

(5) If a patient does not speak English the candidate for practical examination must ensure an interpreter is available for examination purposes to communicate with patient. The interpreter is prohibited from being the practical examination candidate. Any costs incurred for interpreter services are the responsibility of the practical examination candidate.

(6) A practical examination candidate may be disqualified from taking the practical examination if any requirements of this rule are not met.

Stat. Auth.: ORS 680.520 & 680.565

Stats. Implemented: ORS 680.520 & 680.565

Hist.: HDLP 3-1998, f. 6-26-98, cert. ef. 7-1-98; HDLP 1-2001, f. 3-21-01, cert. ef. 4-1-01; HLO 2-2004, f. 6-29-04, cert. ef. 7-1-04; HLA 10-2013, f. & cert. ef. 7-1-13; HLA 4-2014(Temp), f. & cert ef. 7-1-14 thru 12-28-14

## 331-420-0020

### Approved Sterilization and Disinfection Standards

(1) New gloves must be worn during any disinfection or sterilization procedure.

(2) The disinfection or sterilization process listed in subsection (4) or (5) of this rule is not required if disinfected or sterilized single-use prepackaged instruments, obtained from suppliers or manufacturers are used.

(3) All reusable instruments that come in direct contact with a client's skin or are exposed to blood or other potentially infectious materials must be disinfected or sterilized before use on a client or re-used on another client in accordance with subsection (4) or (5) of this rule.

(4) Approved cleaning and disinfection process for reusable instruments includes the following ordered method:

(a) Clean reusable instruments by manually brushing or swabbing visible foreign matter and rinsing the instruments with warm water and an appropriate detergent solution to remove blood and other potentially infectious materials;

(b) Immerse reusable instruments in a high level disinfectant defined under OAR 331-405-0020 and labeled accordingly; and

(c) Store disinfected instruments in a dry, disinfected, closed cabinet or other tightly-covered container reserved for the storage of disinfected instruments.

(5) Approved cleaning and sterilization process for reusable instruments includes the following ordered method:

(a) Clean reusable instruments by manually brushing or swabbing visible foreign matter and rinsing the instruments with warm water and an appropriate detergent solution to remove blood and other potentially infectious materials;

(b) Individually package reusable instruments using sterilization pouches that include a color indicator strip to assure sufficient temperature during each sterilization cycle. The date the sterilization was performed must be applied to the sterilization pouch;

(c) Place individually packaged reusable instruments in an autoclave sterilizer (steam or chemical), or dry heat sterilizer registered and listed with the Food and Drug Administration; and

(d) Store sterilized instruments individually packaged in a dry, disinfected, closed cabinet or other tightly-covered container reserved for the storage of sterilized instruments.

(6) If a denturist is using an autoclave or dry heat sterilizer under subsection (5) of this rule the denturist must have the autoclave or dry heat sterilizer biologically tested monthly (spore testing) verified through an inde-

# ADMINISTRATIVE RULES

pendent laboratory, to assure all microorganisms have been destroyed and sterilization achieved. Biological spore test results must be immediately available at all times for inspection by the Agency and kept at facility premises for a minimum of two years.

(7) If a dentist is using an autoclave or dry heat sterilizer under subsection (5) of this rule they must ensure the entire device is cleaned and maintained in accordance with manufacturer's instructions and a copy of the manufacturer's recommended procedures for the operation of the device must be kept on file at the business premise.

(8) The expiration date for sterilized reusable instruments under subsection (5) of this rule is one year from the date of sterilization unless the integrity of the package is compromised.

(9) All surfaces that may be contaminated by blood or other potentially infectious materials must be disinfected with a high-level disinfectant defined under OAR 331-405-0020 and is labeled accordingly.

Stat. Auth.: ORS 676.605, 676.615, 680.550 & 680.565  
Stats. Implemented: ORS 676.605, 676.615, 680.550 & 680.565  
Hist.: HD 3-1992, f. & cert. ef. 3-25-92, Renumbered from 333-020-0085(9)(a) through (h); HD 22-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 3-1998, f. 6-26-98, cert. ef. 7-1-98, Renumbered from 333-020-0100; HDLP 1-2001, f. 3-21-01, cert. ef. 4-1-01; HLO 1-2003, f. 1-21-03, cert. ef. 2-1-03; HLO 2-2004, f. 6-29-04, cert. ef. 7-1-04; HLA 10-2013, f. & cert. ef. 7-1-13; HLA 4-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14

## Oregon Housing and Community Services Department Chapter 813

**Rule Caption:** Adopts rules for the Housing Choice Landlord Guarantee Program

**Adm. Order No.:** OHCS 32-2014

**Filed with Sec. of State:** 6-24-2014

**Certified to be Effective:** 6-24-2014

**Notice Publication Date:** 5-1-2014

**Rules Adopted:** 813-360-0000, 813-360-0010, 813-360-0020, 813-360-0030, 813-360-0040, 813-360-0050, 813-360-0060

**Subject:** Implements rules to administer the Housing Choice Landlord Guarantee Program. The program provides certain financial assistance to qualifying landlords to mitigate damages caused by tenants as a result of occupancy under the Housing Choice Voucher program.

**Rules Coordinator:** Sandy McDonnell—(503) 986-2012

### 813-360-0000

#### Purpose and Objectives

The rules in OAR chapter 813, division 360 are promulgated to accomplish the general purpose of implementing ORS 456.375 to ORS 456.390 (the "Act"), which designates the Housing and Community Services Department, herein after referred to as "the Department" as the state agency responsible for developing and administering the Housing Choice Landlord Guarantee Program and set forth the program requirements. The purpose of the program is to provide certain financial assistance to qualifying landlords to mitigate damages caused by tenants as a result of occupancy under the Housing Choice Voucher Program.

Stat. Auth.: ORS 456.555  
Stats. Implemented: ORS 456.375 to 456.390  
Hist.: OHCS 32-2014, f. & cert. ef. 6-24-14

### 813-360-0010

#### Definitions

Words and terms used in OAR chapter 813, division 360 should be construed as defined or used in the Act, in 813-005-0005, or in this division unless the context clearly requires otherwise. For purposes of this division:

(1) "Claim" means a claim in form and substance acceptable to the department filed by a landlord for program assistance to reimburse the landlord for qualifying damages awarded in a final judgment as further provided in these rules.

(2) "Housing Choice Landlord Guarantee Program" or "program" means the program established in the Act as further set forth in this division.

(3) "Housing Choice Landlord Guarantee Program Fund" or "fund" means the fund established pursuant to ORS 456.385 for the reimbursement of qualifying program damages.

(4) "Housing Choice Voucher Program" means the federal tenant-based assistance program established under 42 USC 1437(f)(o).

(5) "Landlord" means an owner of a dwelling unit that has entered into an agreement with a local housing authority to receive tenant-based assistance payments under the Housing Choice Voucher Program and that has entered into a rental or lease agreement with a tenant determined to be

eligible to receive assistance under the Housing Choice Voucher Program. "Landlord" includes a person who is authorized by the owner, lessor or sublessor to manage the premises or to enter into a rental agreement.

(6) "Local housing authority" means a housing authority defined in ORS Chapter 456 that has entered into a contract with the Secretary of Housing and Urban Development of the United States pursuant to which the housing authority is authorized to make tenant-based assistance payments to landlords within a designated county or area of operation under the Housing Choice Voucher Program.

(7) "Program assistance" means reimbursement funding to a landlord by the department from the Housing Choice Landlord Guarantee Program Fund pursuant to these rules in response to a claim filed with the department by a landlord.

(8) "Tenant" means an individual or a family eligible to receive tenant-based assistance payments under the Housing Choice Voucher Program who has entered into a rental or lease agreement with a landlord.

Stat. Auth.: ORS 456.555  
Stats. Implemented: ORS 456.375 to 456.390  
Hist.: OHCS 32-2014, f. & cert. ef. 6-24-14

### 813-360-0020

#### Program Administration

(1) The department, in its sole discretion, may choose to contract with one or more public or private provider(s) for the administration of the Housing Choice Landlord Guarantee Program. The department is not subject to the provisions of ORS chapter 279A or 279B in procuring or effectuating such a contract.

(2) If the department chooses to contract for the administration of the program:

(a) The department will do so in accordance with OAR chapter 813, division 6 as supplemented herein.

(b) The department will publish solicitations, application requirements, award criteria, and deadlines through the Oregon Procurement Information Network (ORPIN).

(c) The department will provide stakeholders, including the Housing Choice Advisory Committee as created by ORS 456.390(4), with the opportunity to provide input regarding the contract award process.

Stat. Auth.: ORS 456.555  
Stats. Implemented: ORS 456.375 to 456.390  
Hist.: OHCS 32-2014, f. & cert. ef. 6-24-14

### 813-360-0030

#### Landlord Eligibility

(1) In order to be eligible for program assistance, a landlord must first obtain a judgment with a monetary award against a tenant from a court in the county in which the tenant or the property is located.

(a) The judgment must be from a circuit court, the small claims department of a circuit court, or a justice court.

(b) The time frame for appeal of the judgment must have expired without appeal or the judgment must otherwise not be subject to further judicial review.

(2) Program assistance is limited to reimbursement for those amounts covered in a judgment that are related to property damage, unpaid rent or other damages satisfactorily described and documented in a claim to the department from a landlord and:

(a) Incurred after July 1, 2014;

(b) Caused as a result of the tenant's occupancy pursuant to a rental agreement under the Housing Choice Voucher Program in effect at the time the damage was incurred;

(c) That exceed normal wear and tear; and

(d) That are in excess of \$500, but not more than \$5,000 per tenancy.

(A) Program assistance for damages in amounts less than \$500 may be provided by the department, when a partial amount still owes on a judgment in excess of \$500. For example, if a landlord has received a payment of \$400 on a \$700 judgment for qualifying damages, the landlord may seek reimbursement for the remaining \$300 owing to it under the judgment.

(B) Program assistance for damages up to \$5,000 may be provided by the department on a judgment that is in excess of \$5,000. For example, if a landlord has a judgment for \$7,000 of qualifying damages, the landlord may seek reimbursement for up to \$5,000 of the qualifying damages.

(3) Qualifying damages included within the meaning of property damage, unpaid rent or other damages may include:

(a) Attorney fees, court costs, and interest;

(b) Loss of rental income during the time required for repairs to with respect to qualifying property damage;

(c) Lease-break fees;

(d) Other costs related to lease violations by a tenant.

# ADMINISTRATIVE RULES

(4) A landlord may not seek, accept or retain program assistance from the department for amounts paid to the landlord for qualifying damages by the tenant or by a third party.

(5) If, after submitting a claim for program assistance to the department, a landlord receives payment for any claimed damages from a tenant or a third party, the landlord must notify the department within ten (10) days of such payment.

(6) A landlord must provide restitution to the department for overpaid program assistance within forty-five (45) days.

(7) The department shall maintain a record of program assistance provided to a landlord to assist it in determining if there has been an overpayment of program assistance to that landlord.

(8) The following examples are illustrative of when restitution may or may not be owed by a landlord to the department. Any amounts paid to the landlord shall be applied to the sum total of the qualifying judgment owed the landlord:

(a) Example 1: A qualifying judgment is \$6,000. The landlord receives a \$5,000 reimbursement from the fund, and a \$1,000 payment from the tenant. The landlord reports the receipt of \$1,000. There has been no overpayment.

(b) Example 2: A qualifying judgment is for \$6,000. The landlord receives a \$5,000 reimbursement from the fund, and a \$2,000 payment from the tenant. The landlord reports the \$2,000. There has been a \$1,000 overpayment to the landlord, which must be reimbursed to the department by the landlord.

(9) A landlord must submit a claim for program assistance to the department within one year from the date of the expiration of the right to appeal a qualifying judgment against a tenant or the date after which the judgment is not subject to further appeal.

(10) A landlord must file a satisfaction of judgment in the amount of any program assistance received from the department in the court from which the judgment against the tenant was obtained. A copy of this filed satisfaction must be delivered to the department within 30 days of the landlord's receipt of the program assistance.

Stat. Auth.: ORS 456.555

Stats. Implemented: ORS 456.375 to 456.390

Hist.: OHCS 32-2014, f. & cert. ef. 6-24-14

## 813-360-0040

### Claim for Assistance

(1) The department will provide the required form or information for a claim for program assistance on its website. A claim must include a signed declaration by the landlord as to the truth of matters asserted, including but not necessarily limited to:

(a) An attestation regarding how the damages submitted for reimbursement meet the criteria set out in OAR 813-360-0030 (Landlord Eligibility);

(b) The tenant's last known address and the address used to accomplish service of the court pleadings on the tenant, if different;

(c) The landlord's current mailing or contact address;

(d) The specific address of the property where the tenant resided at the time the damage was incurred;

(e) A list of any payments the landlord has received towards the judgment, either by the tenant or a third party.

(2) The claim must be accompanied by:

(a) A copy of the complaint;

(b) A court-certified copy of the judgment;

(c) A copy of the final security deposit accounting containing an itemization of damages;

(d) A copy of the pre- and post-tenancy inspection reports, if any;

(e) A copy of Part A of the Housing Choice Voucher Program agreement between the landlord, the tenant, and the housing authority, for the property where the damage was incurred; and

(f) Such other information as the department may require.

Stat. Auth.: ORS 456.555

Stats. Implemented: ORS 456.375 to 456.390

Hist.: OHCS 32-2014, f. & cert. ef. 6-24-14

## 813-360-0050

### Awards of Assistance

(1) Prior to approving a claim for program assistance, the department will:

(a) Determine if the claim is complete and satisfies the criteria necessary to be a qualifying claim, including as set out in OAR 813-360-0030 and 813-360-0040;

(b) Verify with the public housing authority that the tenant was a voucher holder at the time the tenancy was terminated.

(2) The department will endeavor to review claims for program assistance and make awards of program assistance for qualifying applications within 45 days of its receipt of all required information. The department may choose to require the submittal of additional or clarifying information.

Stat. Auth.: ORS 456.555

Stats. Implemented: ORS 456.375 to 456.390

Hist.: OHCS 32-2014, f. & cert. ef. 6-24-14

## 813-360-0060

### Tenant Repayment Plans

(1) When a payment of program assistance is made to a landlord, the department will require the responsible tenant to repay the full or a partial amount of any program assistance paid to the landlord and shall offer the responsible tenant a reasonable repayment agreement that provides for repayment by the tenant to the department of the full or a partial amount of the program assistance paid to the landlord.

(2) Repayment plans from the department shall take into account factors the department deems relevant as to capacity for repayment, including but not limited to the tenant's family size, monthly income, debt obligations, and the family's ability to meet the basic needs of the household.

(3) After the department pays a claim for program assistance to a landlord, the department will serve a notice upon the responsible tenant that informs the tenant of the following:

(a) That the tenant must repay to the department the amount of any program assistance paid to a landlord on the tenant's behalf;

(b) That the tenant may enter into a reasonable repayment agreement with the department to repay the full or a partial amount of any program assistance paid to a landlord on the tenant's behalf. The tenant may request a repayment plan by contacting the department;

(c) That the tenant may request a waiver of the repayment requirement for good cause by contacting the department;

(d) That if the tenant does not enter into a repayment agreement or make good faith efforts to comply with the terms of a repayment agreement, or otherwise fails to repay the full or an agreed-upon partial amount of assistance paid to the landlord on the tenant's behalf, the department may seek to collect any amount remaining unpaid by the tenant;

(e) That the department will make available upon request by local housing authorities and landlords information regarding a tenant's compliance with the provisions of this section, including records of repayments made by the tenant, where applicable;

(f) That the tenant may seek a waiver of repayment requirements under this section for good cause shown and may contest the department's determination that the tenant has an obligation to repay any amounts of assistance paid to a landlord on the tenant's behalf, in accordance with ORS Chapter 183; and

(g) The means by which a tenant may contest the department's determination that the tenant has an obligation to repay any program assistance, its determination as to a tenant's failure to comply in good faith with a repayment agreement, or the department's determination with respect to any requested waiver of repayment.

(4) The department will waive program assistance repayment requirements upon its determination of good cause for such waiver. The department may waive other requirements of the Act and this division upon its determination of good cause for such waiver. Factors that the department may consider if there is good cause for waiver include, but are not limited to the following:

(a) The landlord has already been paid, either by the tenant or a third party;

(b) The damages resulting in the judgment were the result of domestic violence, sexual assault, stalking, or other crime of which the tenant or someone in the tenant's household was the victim;

(c) The tenant and family have insufficient income, including all financial assistance and subsidies, to meet the basic minimum needs of the household; and

(d) Other extenuating circumstances as further defined in the guidelines.

(5) Amounts repaid by tenants under this section will be deposited by the department into the fund.

(6) The department may pursue any rights, remedies or processes provided at law or otherwise for the collection of unpaid amounts due from a tenant for program assistance paid to a landlord on the tenant's behalf.

(7) The department will, in accordance with ORS chapter 183, provide an opportunity for the tenant to contest the following:

(a) The department's determination that the tenant has an obligation to repay the department,

# ADMINISTRATIVE RULES

(b) That the tenant has failed to repay amounts due under a repayment agreement,

(c) That the tenant has not made or is not making a good faith effort to comply with the repayment agreement;

(d) That the tenant has not paid to the department the full or a partial amount of the assistance paid to a landlord on the tenant's behalf; or

(e) That the department properly failed to waive a repayment obligation.

(8) The department will serve a notice of noncompliance upon a tenant in accordance with ORS 183.415 that states the amount of program assistance remaining unpaid by the tenant. If the notice is served by mail, it will be sent to the tenant's last known address, and the address used to accomplish service of the court pleadings on the tenant, if different.

(9) The department will note whether or not a tenant is in compliance with applicable repayment obligations and make that information available to local housing authorities and landlords at no cost. A tenant will be considered in compliance if the tenant has been granted a relevant waiver, or the department determines that the tenant has made or is making good faith efforts at repayment. The department will note if the full amount of program assistance has been repaid.

(a) The contact number or email address that a landlord may use to request compliance information will be made available on the department's website.

(b) The department will respond promptly to requests for compliance information.

(c) The department will update compliance information on a timely basis, not less frequently than every 30 days.

Stat. Auth.: ORS 456.555

Stats. Implemented: ORS 456.375 - 456.390

Hist.: OHCS 32-2014, f. & cert. ef. 6-24-14

.....  
**Oregon University System,  
Oregon Institute of Technology  
Chapter 578**

**Rule Caption:** To amend the schedule of Special Institutional Fees, Parking Fees and Revolving Payment Plan.

**Adm. Order No.:** OIT 1-2014

**Filed with Sec. of State:** 6-18-2014

**Certified to be Effective:** 9-15-14

**Notice Publication Date:** 4-1-2014

**Rules Amended:** 578-041-0030, 578-041-0040, 578-072-0020, 578-072-0030, 578-072-0040, 578-072-0050, 578-072-0060, 578-072-0070, 578-072-0080

**Subject:** 578-041-0030 Amends the Schedule of Special Institution Fees and Charges. Amendments allow for increases, revisions, additions or deletions of special course fees, and general service fees for fiscal year 2014-2015. The schedule of subject fees may be obtained from the Oregon Institute of Technology Business Affairs Office and available at <http://www.oit.edu/college-costs/tuition-fees>.

578-041-0040 Amends the Revolving Charge Account Plan. Amendment allows for changes in the schedule of required payments and terms of the eligibility of the plan. The form may be obtained at the Oregon Institute of Technology Business Affairs Office and available online at <http://www.oit.edu/faculty-staff/ba/ar>.

578-072-0020 Amends the Vehicle Registration Requirements. Amendment changes the purchase locations for permits, placement of permits on or in vehicle and type of available permits.

578-072-0030 Amends Parking Permits and Fees. Amendment sets increases and additions of parking fines.

578-072-0040 Amends Driving on Campus Rule. Amendment will be re-written to allow for Administrative Parking Rules on both campuses of Oregon Institute of Technology.

578-072-0050 Amends Parking on Campus. Amendment will incorporate both campuses of Oregon Institute of Technology into the Administrative Rule for parking on campus.

578-072-0060 Amends Application of Motor Vehicle Laws of the State of Oregon. Amendment will allow for both campuses of Oregon Institute of Technology to follow State of Oregon motor vehicle laws.

578-072-0070 Amends Penalties for Offenses. Amendment sets increases and additions of parking penalties for fiscal year 2014-

2015. The schedule of subject fees may be obtained from the Oregon Institute of Technology Business Affairs Office and available online at <http://www.oit.edu/faculty-staff/ba/ar>.

578-072-0080 Amends Enforcement of Penalties. Amendment will be revised to include both campuses of Oregon Institute of Technology.

**Rules Coordinator:** Denise Reid—(541) 885-1227

## 578-041-0030

### Special Institution Fees and Charges

The Schedule of special Institution Fees and Charges establishes charges for selected courses and general services for Oregon Institute of Technology for the academic year 2014-2015 and are hereby adopted by reference. Copies of this fee schedule may be obtained from the Oregon Institute of Technology Business Affairs Office.

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351.070(2)

Hist.: OIT 1-1985, f. 1-10-85, ef. 2-1-85; OIT 1-1986, f. & ef. 9-4-86; OIT 4-1991, f. & cert. ef. 7-22-91; OIT 5-1992, f. & cert. ef. 9-24-92; OIT 1-1993, f. & cert. ef. 9-24-93; OIT 1-1995, f. & cert. ef. 7-7-95; OIT 1-1996, f. & cert. ef. 9-11-96; OIT 2-1996; f. & cert. ef. 12-19-96; OIT 1-1997, f. & cert. ef. 12-31-97; OIT 2-1998, f. & cert. ef. 11-12-98; OIT 1-1999, f. & cert. ef. 8-26-99; OIT 1-2000, f. & cert. ef. 7-7-00; OIT 1-2001, f. & cert. ef. 7-19-01; OIT 1-2002, f. & cert. ef. 7-15-02; OIT 1-2003, f. & cert. ef. 6-11-03; OIT 1-2004, f. & cert. ef. 6-9-04; OIT 1-2005, f. & cert. ef. 6-10-05; OIT 1-2006, f. & cert. ef. 6-2-06; OIT 1-2007, f. & cert. ef. 6-7-07; OIT 1-2008, f. & cert. ef. 6-10-08; OIT 1-2009, f. & cert. ef. 9-2-09; OIT 1-2010(Temp), f. & cert. ef. 6-28-10 thru 12-23-10; OIT 2-2010, f. & cert. ef. 8-30-10; OIT 1-2011, f. & cert. ef. 6-20-11; OIT 4-2011, f. & cert. ef. 8-16-11; OIT 1-2012, f. & cert. ef. 7-11-12; OIT 2-2012, f. & cert. ef. 9-14-12; OIT 1-2013, f. 6-12-13, cert. ef. 9-16-13; OIT 1-2014, f. 6-18-14, cert. ef. 9-15-14

## 578-041-0040

### Revolving Charge Account Plan

Oregon Institute of Technology adopts the Revolving Charge Account programs as permitted by OAR 580-040-0041 as amended, for all receivables due the Institute.

(1) The following are eligible to participate in the Revolving Charge Account program:

- Current and past students, faculty and staff;
- The general public;
- Companies and corporations;
- Governments and governmental organizations.

(2) Participants in the program shall sign an agreement to abide by the terms and conditions of the program, including repayment as required thereby, except for debts arising from fines, penalties, and the like.

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351.070

Hist.: OIT 6-1992, f. & cert. ef. 10-23-92; OIT 1-2014, f. 6-18-14, cert. ef. 9-15-14

## 578-072-0020

### Vehicle Registration

(1) A vehicle is any motor conveyance requiring a state or city license to operate on public highways.

(2) After the first day of classes, vehicles must be registered when brought on the campus the first time. Permits are issued at the Cashier's Office or online via Web for Student.

(3) Vehicles must have either a general area or Residence Hall permit. Double registration of any vehicle is not permitted.

(4) Registration may be rescinded and removal of the permit required:

- For failure to comply with traffic regulations or to rulings of the Traffic Commission or Traffic Appeals Board;
- For failure to pay fines as prescribed in OAR 578-072-0070 or as assessed by the Traffic Commission;
- When the permit is used on an unregistered vehicle or by an unauthorized person;
- When registration is found to be false or inaccurate;
- When enrollment is terminated;
- When the time specified on the permit has expired.

Stat. Auth.: ORS 351 & 352

Stats. Implemented: ORS 352.360

Hist.: OIT 2, f. & ef. 9-7-76; OIT 1-1979, f. & ef. 6-8-79; OIT 6-1991, f. & cert. ef. 7-24-91; OIT 3-2007, f. & cert. ef. 6-7-07; OIT 1-2014, f. 6-18-14, cert. ef. 9-15-14

## 578-072-0030

### Parking Permit and Fees

(1) Faculty and Staff permits for Klamath Falls campus will be issued for a fee of \$150.00 per year or \$75.00 per term. Vehicles with these permits must park in the parking areas.

(2) Student permits for Klamath Falls campus will be issued for a fee of \$95.00 per year or \$47.50 per term. Vehicles with these permits must park in the parking areas.

# ADMINISTRATIVE RULES

(3) Faculty and Staff permits for Wilsonville Campus will be issued for a fee of \$35.00 per year.

(4) Bicycles must be licensed by the municipal jurisdiction where the campus is located. A parking permit is not required.

(5) Special permits may be issued at the Cashier's office under the following circumstances:

(a) Application for a Disabled Parking permit must be submitted to the Student Health Service. After approval by Student Health Service, a Disabled Parking permit will be issued.

(b) Persons displaying either permanent or temporary disabled permits are authorized open parking on the campus in addition to parking in the areas designated as disabled parking.

(c) Temporary permits are issued at no charge by Campus Safety, if required. Vehicles displaying temporary permits must park in the area designated by that permit. Students, faculty, and staff members are able to obtain up to 3 days per term of temporary parking permits. Temporary permits are official documents and may not be modified or altered in any way.

(d) Visitor permits are issued at no charge and must be displayed as indicated on the permit. A visitor is any person who is an Oregon Tech guest but is not officially affiliated with Oregon Tech.

(e) Special guest permits: Guest permits will be issued by Campus Safety.

(6) Service Vendor permits are issued by Facilities or Campus Safety for contractors, media personnel, and vendors performing work on campus.

(7) Up to three vehicles registered on a single hanging permit-additional charge \$10.00.

(8) Replacement Permits: A replacement permit may be purchased for a substitute vehicle when the original vehicle is sold, damaged beyond repair, or when the permit is lost or damaged. In the event a permit is stolen, a stolen permit report must be filed with Campus Safety before a replacement permit may be issued. A replacement permit may be obtained for a fee of \$10.00 upon submission to the cashier of permit number evidence from the original permit.

(9) Possession of a lost or stolen permit may be grounds for criminal charges, and/or University disciplinary action, including revocation of parking privileges.

(10) Parking permits are issued by the academic year or for a term. Refunds will be made only if a parking permit is removed from the vehicle and returned to the Cashier within ten (10) days of the purchase date. No other refunds will be given.

(11) Parking permits are considered University records, and as such, may not be falsified, misused, forged, modified or altered in any way. Vehicles bearing forged or altered permits are subject to a fine, criminal proceeding, and/or discipline by the University.

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351.070

Hist.: OIT 2, f. & ef. 9-7-76; OIT 10, f. & ef. 6-6-77; OIT 1-1978, f. & ef. 6-5-78; OIT 1-1979, f. & ef. 6-8-79; OIT 6-1980, f. & ef. 6-9-80; OIT 3-1985, f. 8-5-85, ef. 9-1-85; OIT 1-1988(Temp), f. 6-20-88, cert. ef. 7-1-88; OIT 3-1991, f. & cert. ef. 7-8-91; OIT 2-1992, f. & cert. ef. 7-21-92; OIT 1-1993, f. & cert. ef. 9-24-93; OIT 1-1994, f. & cert. ef. 8-25-94; OIT 1-1996, f. & cert. ef. 9-11-96; OIT 1-1997, f. & cert. ef. 12-31-97; OIT 2-1998, f. & cert. ef. 11-12-98; OIT 1-1999, f. & cert. ef. 8-26-99; OIT 1-2000, f. & cert. ef. 7-7-00; OIT 1-2001, f. & cert. ef. 7-19-01; OIT 1-2002, f. & cert. ef. 7-15-02; OIT 2-2005, f. & cert. ef. 6-10-05; OIT 2-2006, f. & cert. ef. 6-2-06; OIT 2-2007, f. & cert. ef. 6-7-07; OIT 3-2008, f. & cert. ef. 6-10-08; OIT 2-2011, f. & cert. ef. 7-25-11; OIT 3-2011, f. & cert. ef. 7-29-11; OIT 5-2011, f. & cert. ef. 8-16-11; OIT 1-2012, f. & cert. ef. 7-11-12; OIT 2-2012, f. & cert. ef. 9-14-12; OIT 1-2013, f. 6-12-13, cert. ef. 9-16-13; OIT 1-2014, f. 6-18-14, cert. ef. 9-15-14

## 578-072-0040

### Driving on Campus

(1) Any operator of a motor vehicle or bicycle, while driving on campus, must comply with the traffic laws and ordinances of the State of Oregon and the municipal jurisdiction where the campus is located, and with the regulations governing motor vehicles and bicycles on campus.

(2) Maximum speeds for operating vehicles on campus are posted.

(3) Vehicles leaving service roads and parking aisles must yield to vehicles operated on access roads; and these vehicles must in turn yield to main roads; and vehicles operated on any road must yield to pedestrian traffic.

(4) Driving any vehicle on sidewalks, lawns, landscape areas, or any area not designated or designed for driving is prohibited.

(5) Cases involving destruction of state property resulting from the use of a motor vehicle or bicycle shall be automatically referred to the Business Office for collection of damages, in addition to the customary fine.

(6) Visitors must abide by all posted regulations.

Stat. Auth.: ORS 351 & 352

Stats. Implemented: ORS 352.360

Hist.: OIT 2, f. & ef. 9-7-76; OIT 6-1991, f. & cert. ef. 7-24-91; OIT 1-2014, f. 6-18-14, cert. ef. 9-15-14

## 578-072-0050

### Parking on Campus

(1) Any operator of a motor vehicle or bicycle, while parking on campus, must comply with the traffic laws and ordinances of the State of Oregon, the municipal jurisdiction where the campus is located, and the regulations governing motor vehicles and bicycles on campus. A "parked vehicle" refers to any vehicle which is stopped with or without a driver in attendance.

(2) Areas designated for parking are indicated on the campus traffic map.

(3) Zones designated as special service are restricted to loading/unloading and for maintenance services.

(4) Vehicles shall be parked on campus only in areas designated for parking. Parking of vehicles on any road, driveway, fire lane, entranceway to building, pedestrian lane, and landscaped area is prohibited. Encroachment upon adjacent spaces and parking aisles is prohibited, i.e., all vehicles must be parked between parking space markers.

(5) Parking with the front wheels adjacent to the curb (head in only) is required where angle or right-angle parking spaces are provided. Parallel parking is required where paralleled spaces are provided and is permissible in service zones for purposes of loading and unloading.

(6) When need has been established, a reserved parking space may be authorized by the Traffic Commission within a parking area; no other vehicle may be parked in this space.

(7) Bicycles must be parked in a bike rack. Parking of a bicycle in any building is prohibited.

(8) Open parking is permissible in designated faculty, staff, student, and visitor lots between 6 p.m. and 6 a.m., weekends and school holidays except for parking in reserved spaces, service areas, fire lanes, and limited parking zones.

(9) Repair of vehicles in any parking area or zone is prohibited.

(10) Visitors may park in any area designated for parking after obtaining a visitor parking pass.

Stat. Auth.: ORS 351 & 352

Stats. Implemented: ORS 352.360

Hist.: OIT 2, f. & ef. 9-7-76; OIT 10, f. & ef. 6-6-77; OIT 1-1978, f. & ef. 6-5-78; OIT 1-1979, f. & ef. 6-8-79; OIT 6-1980, f. & ef. 6-9-80; OIT 6-1991, f. & cert. ef. 7-24-91; OIT 4-2007, f. & cert. ef. 6-7-07; OIT 4-2008, f. & cert. ef. 6-10-08; OIT 1-2014, f. 6-18-14, cert. ef. 9-15-14

## 578-072-0060

### Application of Motor Vehicle Laws of the State of Oregon

All motor vehicle laws of the State of Oregon and the municipal jurisdiction where the campus is located, together with amendments hereafter adopted, are applicable to the campus of Oregon Institute of Technology to the same extent as if said campus and its roads were public highways, and all provisions of said motor vehicle laws are invoked and enforceable except insofar as they are incompatible or inconsistent with these regulations.

Stat. Auth.: ORS 352

Stats. Implemented: ORS 352.360

Hist.: OIT 2, f. & ef. 9-7-76; OIT 10, f. & ef. 6-6-77; OIT 1-2014, f. 6-18-14, cert. ef. 9-15-14

## 578-072-0070

### Penalties for Offenses

(1) Vehicle not registered — \$25.

(2) Permit not properly displayed — \$25.

(3) Falsification of information — \$140.

(4) Parking offenses — \$25-\$35.

(5) Driving a motor vehicle or bicycle in non-designated areas — \$30 plus the cost of all repairs.

(6) Bicycles parked in illegal areas — \$20.

(7) Parking in designated disabled space — \$195/\$455 (by authority of ORS 811.625(5)).

(8) Using a hanging permit in an unregistered vehicle — \$60.

(9) Moving violations, including such offenses as reckless driving, driving while intoxicated, speeding, driving the wrong way, running stop signs, excessive noise, and other offenses not otherwise specified herein, are a violation of the State of Oregon motor vehicle laws and punishable upon conviction, in accordance with Oregon State law, or may be referred to the municipal jurisdiction where the campus is located for arrest and/or prosecution. Campus violators will be fined \$35. Violations referred to a municipal jurisdiction revert to city bails and fines.

# ADMINISTRATIVE RULES

(10) Habitual offenders are fined \$60 in addition to the regular fine for the offense for which they are found guilty. Habitual offenders are individuals who have been found guilty of three or more offenses in an academic year. The \$60 fine, in addition to the offense fine is imposed for the third conviction and each conviction thereafter during an academic year.

(11) FAILURE TO ANSWER A CITATION AS DIRECTED OR RESPOND TO A LETTER from the Traffic Appeals Board within the time specified thereon may be punishable by a fine of \$15. An additional \$15 fine is levied for failure to respond to a second letter within the time specified.

(12) Excessive citations may result in revocation of a parking permit by the Traffic Commission. A student violator may be referred to the Vice President for Student Affairs. A faculty or staff member may be referred to the Vice President for Finance and Administration.

(13) Payment of fines will be required prior to appeal of citation before the Traffic Appeals Board.

(14) Any student who fails to pay the Cashier's Office for a traffic citation, after written notice, will have the fine added to their account balance, or deducted from their payroll check.

(15) Any faculty or staff member who fails to pay the Cashier's Office for a traffic citation, after written notice, may have the fine deducted from their payroll check.

(16) A vehicle may be towed off campus and impounded and the owner subjected to towing and storage fees in addition to penalties, under the following circumstances.

(a) Any vehicle causing imminent danger to people or college property;

(b) A vehicle having a parking permit and receiving five (5) or more citations within the school year;

(c) A vehicle not having a parking permit and receiving three (3) citations within the school year;

(d) A vehicle left parked or standing in an area not normally used for vehicular traffic including parking on sidewalks or grass;

(e) Vehicles considered abandoned for at least seven (7) days.

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351.070

Hist.: OIT 2, f. & ef. 9-7-76; OIT 10, f. & ef. 6-6-77; OIT 1-1978, f. & ef. 6-5-78; OIT 3-1985, f. 8-5-85, ef. 9-1-85; OIT 6-1991, f. & cert. ef. 7-24-91; OIT 1-1994, f. & cert. ef. 8-25-94; OIT 1-1997, f. & cert. ef. 12-31-97; OIT 2-2002, f. & cert. ef. 10-24-02; OIT 6-2007, f. & cert. ef. 6-7-07; OIT 5-2008, f. & cert. 6-10-08; OIT 1-2014, f. 6-18-14, cert. ef. 9-15-14

## 578-072-0080

### Enforcement of Penalties

Tickets will be issued after the first day of classes. A student, faculty, or staff member who is cited for violation of a traffic regulation shall, within the time provided on the citation:

(1) Pay the amount prescribed on the citation.

(2) Request a hearing in person or in writing before the Traffic Appeals Board and pay the amount prescribed on the citation. The Traffic Appeals Board shall review the matter and its decision will be final. Appeal to the Traffic Appeals Board waives the right to appear before the District Court or Municipal Court of the municipal jurisdiction where the campus is located. Failure to appear before the Traffic Appeals Board on the hearing date, unless prior arrangements have been made, shall subject the person to payment of the fine as shown on the citation.

(3) Any person refusing to appear before the Traffic Appeals Board or failing to pay their fine may be cited into Municipal or District Court of the municipal jurisdiction where the campus is located under the Oregon Vehicle Code. Oregon Institute of Technology will transfer the charges through the City Attorney.

Stat. Auth.: ORS 351 & 352

Stats. Implemented: ORS 352.360

Hist.: OIT 2, f. & ef. 9-7-76; OIT 10, f. & ef. 6-6-77; OIT 1-1978, f. & ef. 6-5-78; OIT 6-1991, f. & cert. ef. 7-24-91; OIT 1-2014, f. 6-18-14, cert. ef. 9-15-14

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### Oregon University System, Oregon State University Chapter 576

**Rule Caption:** Repeal of all Division 576 OARs.

**Adm. Order No.:** OSU 6-2014

**Filed with Sec. of State:** 6-16-2014

**Certified to be Effective:** 6-30-14

**Notice Publication Date:** 5-1-2014

**Rules Repealed:** 576-001-0005, 576-001-0010, 576-001-0015, 576-001-0020, 576-001-0030, 576-001-0040, 576-001-0045, 576-001-

0050, 576-001-0055, 576-001-0060, 576-002-0000, 576-002-0015, 576-002-0017, 576-002-0030, 576-002-0035, 576-002-0060, 576-002-0070, 576-003-0000, 576-003-0005, 576-003-0010, 576-003-0020, 576-003-0040, 576-003-0050, 576-003-0060, 576-003-0070, 576-003-0080, 576-003-0090, 576-003-0100, 576-003-0110, 576-003-0120, 576-004-0000, 576-004-0005, 576-004-0015, 576-004-0020, 576-005-0005, 576-005-0010, 576-005-0015, 576-005-0020, 576-005-0025, 576-005-0030, 576-005-0032, 576-005-0041, 576-010-0000, 576-010-0006, 576-010-0011, 576-010-0021, 576-010-0031, 576-010-0036, 576-010-0041, 576-012-0000, 576-015-0005, 576-015-0010, 576-015-0020, 576-015-0021, 576-015-0025, 576-015-0030, 576-015-0035, 576-015-0040, 576-015-0043, 576-015-0045, 576-015-0050, 576-015-0052, 576-015-0055, 576-015-0056, 576-015-0057, 576-015-0060, 576-016-0000, 576-016-0010, 576-016-0020, 576-016-0030, 576-016-0040, 576-016-0050, 576-016-0060, 576-017-0005, 576-020-0005, 576-020-0010, 576-020-0015, 576-020-0020, 576-020-0025, 576-020-0030, 576-020-0035, 576-020-0040, 576-020-0045, 576-020-0050, 576-020-0055, 576-020-0060, 576-020-0065, 576-022-0005, 576-022-0010, 576-022-0020, 576-022-0025, 576-022-0030, 576-022-0035, 576-022-0045, 576-022-0050, 576-023-0005, 576-023-0010, 576-023-0015, 576-023-0020, 576-023-0025, 576-023-0030, 576-023-0035, 576-023-0040, 576-024-0000, 576-025-0005, 576-025-0020, 576-030-0005, 576-030-0010, 576-030-0015, 576-030-0020, 576-030-0025, 576-030-0035, 576-030-0040, 576-030-0045, 576-030-0050, 576-030-0055, 576-030-0060, 576-030-0070, 576-030-0090, 576-035-0000, 576-035-0010, 576-035-0020, 576-035-0030, 576-040-0010, 576-040-0012, 576-040-0015, 576-045-0000, 576-045-0010, 576-045-0020, 576-045-0030, 576-050-0010, 576-050-0015, 576-050-0020, 576-050-0025, 576-050-0030, 576-050-0035, 576-050-0045, 576-050-0050, 576-050-0055, 576-055-0000, 576-055-0010, 576-055-0020, 576-055-0030, 576-055-0040, 576-055-0050, 576-055-0060, 576-055-0070, 576-055-0080, 576-055-0090, 576-055-0100, 576-055-0110, 576-055-0120, 576-055-0130, 576-055-0140, 576-055-0150, 576-055-0160, 576-056-0000, 576-056-0010, 576-056-0020, 576-056-0030, 576-056-0040, 576-056-0050, 576-056-0060, 576-056-0070, 576-056-0080, 576-056-0090, 576-056-0100, 576-056-0110, 576-056-0120, 576-056-0130, 576-060-0010, 576-060-0015, 576-060-0020, 576-060-0025, 576-060-0031, 576-060-0035, 576-060-0037, 576-060-0038, 576-060-0039, 576-060-0040, 576-065-0000, 576-065-0010, 576-065-0020, 576-080-0005, 576-080-0010, 576-080-0015, 576-080-0020, 576-080-0025, 576-080-0030, 576-080-0035, 576-080-0040, 576-080-0045

**Subject:** Repeal of all Division 576 OARs.

**Rules Coordinator:** Beth Giddens—(541) 737-2449

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### Oregon University System, Portland State University Chapter 577

**Rule Caption:** PSU's Population Research Center forecast schedule and process guidelines for the Oregon Population Forecasts Program

**Adm. Order No.:** PSU 1-2014

**Filed with Sec. of State:** 6-23-2014

**Certified to be Effective:** 6-23-14

**Notice Publication Date:** 6-1-2014

**Rules Adopted:** 577-050-0030, 577-050-0040, 577-050-0050, 577-050-0060, 577-050-0070

**Rules Amended:** 577-050-0005, 577-050-0010

**Subject:** As required by ORS 195, these new rules establish the schedule for issuance of city-county coordinated population forecasts, the forecast intervals, and population cohorts. The rules further detail the process by which an affected local government or public member may file an objection to a proposed forecast. Text of rules changes available at: <http://www.pdx.edu/fadm/rulemaking-portland-state>

**Rules Coordinator:** Diane S. Kirk—(503) 725-2656

# ADMINISTRATIVE RULES

## 577-050-0005

### Authority

(1) The Population and Research Center (PRC), was established in 1965 (then known as the Center for Population Research and Census) by the State Board of Higher Education, which delegated to it the state census responsibilities set forth in ORS 190.510-190.610. These responsibilities include annually preparing population estimates for Oregon, its counties, and incorporated cities and towns.

(2) Chapter 574, Oregon Laws 2013 established the Oregon Population Forecast Program under PRC and requires PRC to prepare and issue population forecasts for cities and counties, for a 50-year period, for purposes of land use planning under ORS 195 and 197.

Stat. Auth.: ORS 190 & 195

Stats. Implemented:

Hist.: PSU 4-1978, f. & ef. 6-26-78; PSU 1-2014, f. & cert. ef. 6-23-14

## 577-050-0010

### Purpose

(1) Rules at OAR 577-050-0015 through 577-050-0020 govern the procedures by which a county or city may obtain review of a population estimate made by the CPRC.

(2) Rules at 577-050-0030 through 577-050-0060 govern population forecasts for counties and cities, for a 50-year forecast period, for purposes of land use planning under ORS 195 through 197.

Stat. Auth.: ORS 190 & 195

Stats. Implemented:

Hist.: PSU 4-1978, f. & ef. 6-26-78; PSU 1-2014, f. & cert. ef. 6-23-14

## 577-050-0030

### Definitions

For the purposes of rules at OAR 577-050-0030 through 577-050-0070 concerning the Oregon Population Forecast Program, the following definitions apply:

(1) "Affected local government" means:

(a) A city or county for which the Portland State University PRC is preparing a population forecast;

(b) A county that contains all or part of a city or an urban growth boundary for which PRC is preparing a population forecast; and

(c) A local service district, as defined in ORS 174.116, that includes territory within the area subject to the population forecast.

(2) "Age-Specific cohorts" means five-year age groups, beginning with 0-4 and continuing through 80-84, with ages 85 years and over as the final age group.

(3) "Base year" means the year that begins the 50-year forecast period for a particular forecast.

(4) "Final Forecast" means the forecast issued by PRC after the formal review process and is deemed final by the PRC.

(5) "Forecast" means the population forecasts required by ORS 195 issued by PRC for each county and its respective cities for land use purposes in accordance with rules in this division. The geographic areas for which a city forecast is issued is the city's urban growth boundary (UGB) at the base year of the forecast.

(6) "Interpolation" means widely used interpolation techniques for establishing single-year forecast intervals between each five-year interval produced by PRC.

(7) "Proposed Forecast" means the forecast provided by PRC prior to the formal review process.

(8) "Urban Growth Boundary" is defined at ORS 197.295(7).

Stat. Auth.: ORS 190 & 195

Stats. Implemented:

Hist.: PSU 1-2014, f. & cert. ef. 6-23-14

## 577-050-0040

### Schedule and Details for Forecasts

(1) At least once every four years, and in accordance with the schedule described in this rule, PRC shall issue a 50-year forecast for:

(a) Each county except Multnomah, Clackamas and Washington Counties;

(b) The portions of Multnomah, Clackamas and Washington Counties that are not within Metro; and

(c) The area within each urban growth boundary (other than the urban growth boundary of Metro) at the time of the base year. For cities with UGBs that are located in more than one county, PRC shall issue forecasts for each part of the UGB (e.g. the City of Willamina's forecast shall be issued separately for each of the portions of the UGB that are in Yamhill or Polk counties).

(2) County forecasts shall provide forecasted total population and forecasted population of age-specific cohorts in five-year intervals only for years ending in "0" and "5".

(3) City UGB forecasts shall provide forecasted total population in five-year intervals only for years ending in "0" and "5".

(4) If the base year does not end in "0" or "5" (e.g. 2015 or 2020), PRC shall provide a population estimate for the base year and for the next closest year ending in "0" or "5" followed by five-year intervals thereafter (e.g., for a base year of 2016, PRC shall produce a population estimate for 2016 and a forecast for 2020, followed by five-year forecast intervals thereafter). PRC shall provide a single-year forecast to complete the 50-year forecast horizon (e.g. for a base year of 2016, the end of the forecast horizon would be 2066 resulting in a single-year forecast interval for 2066, following the five-year interval ending in 2065).

(5) PRC shall provide an interpolation template posted to their website allowing calculation of single-year forecasts between each five-year interval.

(6) The first forecast cycle will span three years from July 2014 to June 2017. In the first forecast cycle, PRC shall release the forecasts in three annual increments. Each annual increment within this first forecast cycle will run from July 1 to June 30 of the following year, and will reflect the population on July 1.

(7) The first cycle of forecasts will be prepared and released in three groups, each consisting of roughly one-third of the counties and their corresponding cities (UGBs), as follows:

(a) Group one: Coos, Curry, Crook, Deschutes, Douglas, Jackson, Jefferson, Josephine, Klamath, and Lane counties and their corresponding cities (UGBs) with a production period of July 2014 through June 2015.

(b) Group two: Baker, Grant, Gilliam, Harney, Hood River, Lake, Malheur, Morrow, Sherman, Umatilla, Union, Wasco, Wheeler, and Wallowa counties and their corresponding cities (UGBs) with a production period of July 2015 through June 2016.

(c) Group three: Benton, Clatsop, Columbia, Lincoln, Linn, Marion, Polk, Tillamook, and Yamhill counties and their corresponding cities (UGBs) and the portions of Clackamas, Multnomah, and Washington Counties outside of the Metro UGB and their corresponding cities (UGBs) with a production period of July 2016 through June 2017.

(8) The forecast cycles for years subsequent to the first forecast cycle will be determined by rule based on PRC evaluation of work load, efficiency, maintaining forecasts for counties and their corresponding cities every four years, and other considerations, as necessary.

Stat. Auth.: ORS 190 & 195

Stats. Implemented:

Hist.: PSU 1-2014, f. & cert. ef. 6-23-14

## 577-050-0050

### Forecast Process and Deliverables

(1) PRC shall issue written or electronic notice of Proposed and Final forecasts to the Department of Land Conservation and Development (DLCD), to affected local governments, and to members of the public who have requested notice. PRC shall maintain a web site allowing members of the public to request notice of forecast proceedings. Members of the public may request notice using the website or by written notice through the U.S. Mail.

(2) When preparing and issuing a forecast, PRC shall hold a minimum of one public meeting for each group of counties and cities included in the annual increment of the forecast cycle specified in OAR 577-050-0040(7) to gather, consider and, if appropriate, incorporate available data and information about local conditions received from affected local governments and from members of the public.

(3) PRC shall administer a questionnaire to affected local governments and to members of the public who have requested notice under subsection (1) for each forecast period described in OAR 577-050-0040. The questionnaire will compile information regarding local demographic, social, and economic characteristics and conditions. Responses to the survey questionnaire must be provided to PRC within 30 days for consideration in the proposed forecast. Information or documentation requested in the questionnaire may include, but is not limited to:

(a) Observations on changes in age and racial/ethnic composition of population;

(b) Planned new housing development (target population, number of new units and year of completion);

(c) Planned construction of group quarters facilities (type of facility and size);

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(d) Likely future employers who have made a commitment to locate new employment generators to the area (including the type and number of employees and type of industry);

(e) Public information on infrastructure currently in place and changes that are expected to occur in the forecast period;

(f) Expected changes to zoning designations or density standards; and

(g) Adopted policies regarding population growth in a city's comprehensive plan.

(4) Upon issuance, Proposed and Final forecasts, and accompanying reports, will be posted to the PRC website. The reports will include:

(a) A methodological statement;

(b) A summary of demographic trends; and

(c) Supporting data utilized in the development of the forecasts.

(5) Proposed forecasts and accompanying reports will be issued by March 15 for each forecast period described in OAR 577-050-0040. Notice of the release of the Proposed forecasts will be provided to DLCD, affected local governments, and members of the public who have requested notice under subsection (1) of this rule.

(6) Final forecasts and accompanying reports will be issued by June 30 for each forecast period described in OAR 577-050-0040. Notice of the release of the Final forecasts will be provided to DLCD, affected local governments, and members of the public who have requested notice under subsection (1) of this rule.

Stat. Auth.: ORS 190 & 195

Stats. Implemented:

Hist.: PSU 1-2014, f. & cert. ef. 6-23-14

## 577-050-0060

### Review Process

(1) The formal review process begins when the forecast is posted on the website.

(2) Within 45 days after PRC issues a proposed forecast, a member of the public or an affected local government may file objections with PRC.

(3) If PRC does not receive an objection within the 45-day period, the proposed forecast becomes the final forecast.

(4) If PRC receives an objection within the 45-day period, PRC shall review the objection and either make appropriate changes to the proposed forecast or affirm the proposed forecast, at the discretion of PRC, and issue the final forecast.

(5) Objections to a Proposed forecast must be in writing, must be submitted via US Mail or electronic mail to PRC, and must include data or other information to support the objection. Acceptable data and information may include:

(a) Corrections or revisions to information that had been previously sent to PRC (OAR 577-050-0050 (3));

(b) New information that was obtained after submitting the completed questionnaire during the forecast development period.

(c) Evidence that any of the supporting information used to develop the forecasts is erroneous.

(d) Other information that PRC determines is relevant.

Stat. Auth.: ORS 190 & 195

Stats. Implemented:

Hist.: PSU 1-2014, f. & cert. ef. 6-23-14

## 577-050-0070

### Submission of Information to Department of Land Conservation and Development

At the request of the Department of Land Conservation and Development (DLCD), PRC shall submit its forecasting methodology and local data collection practices for review by an advisory committee established by that Department.

Stat. Auth.: ORS 190 & 195

Stats. Implemented:

Hist.: PSU 1-2014, f. & cert. ef. 6-23-14

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**Rule Caption:** Schedule of Fines and Fees for General Services and Other Charges.

**Adm. Order No.:** PSU 2-2014

**Filed with Sec. of State:** 6-23-2014

**Certified to be Effective:** 6-23-14

**Notice Publication Date:** 6-1-2014

**Rules Amended:** 577-060-0020

**Subject:** Portland State University (PSU) hereby adopts by reference a list of fees and other charges for fiscal year 2014–2015. The list of fees and other charges are available at Portland State University's Office of Finance and Administration website:

<http://www.pdx.edu/fadm/rulemaking-portland-state> and is hereby incorporated by reference in the rule.

**Rules Coordinator:** Diane S. Kirk—(503) 725-2656

## 577-060-0020

### Schedule of Fines and Fees for General Services and Other Charges

The Schedule of Fines and Fees for General Services and Other Charges for the 2014–2015 Fiscal Year are hereby adopted by reference by Portland State University.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 352.360

Hist.: PSU 16(Temp), f. 8-24-77, ef. 9-1-77; PSU 18, f. & ef. 10-4-77; PSU 19(Temp), f. & ef. 10-11-77; PSU 20, f. & ef. 11-18-77; PSU 3-1978(Temp), f. 6-19-78, ef. 7-1-78; PSU 7-1978, f. & ef. 9-5-78; PSU 1-1979, f. & ef. 9-17-79; PSU 3-1980, f. & ef. 9-4-80; PSU 2-1981, f. & ef. 9-10-81; PSU 3-1982, f. & ef. 9-3-82; PSU 1-1983, f. & ef. 2-8-83; PSU 2-1983, f. 6-22-83, ef. 7-1-83; PSU 1-1984, f. 6-8-84, ef. 7-1-84; PSU 1-1985, f. 6-26-85, f. 7-1-85; PSU 1-1986, f. 6-25-86, ef. 7-1-86; PSU 1-1987, f. 6-19-87, ef. 7-1-87; PSU 3-1987(Temp), f. & ef. 8-11-87; PSU 5-1987, f. & ef. 10-27-87; PSU 5-1988, f. & cert. ef. 7-18-88; PSU 7-1988(Temp), f. & cert. ef. 11-29-88; PSU 3-1989, f. & cert. ef. 7-26-89; PSU 5-1990, f. & cert. ef. 7-5-90; PSU 2-1991(Temp), f. & cert. ef. 6-28-91; PSU 3-1991, f. & cert. ef. 8-7-91; PSU 4-1991(Temp), f. & cert. ef. 12-4-91; PSU 1-1992, f. & cert. ef. 1-17-92; PSU 2-1992, f. & cert. ef. 6-16-92 (and corrected 6-19-92); PSU 1-1993, f. & cert. ef. 6-11-93; PSU 2-1993(Temp), f. & cert. ef. 7-13-93; PSU 3-1993(Temp), f. & cert. ef. 7-30-93; PSU 4-1994, f. & cert. ef. 11-3-94; PSU 1-1995, f. & cert. ef. 8-9-95; PSU 1-1996(Temp), f. 1-18-96, cert. ef. 3-1-96; PSU 3-1996, f. & cert. ef. 6-27-96; PSU 1-1997, f. & cert. ef. 8-1-97; PSU 4-1998, f. & cert. ef. 9-17-98; PSU 4-1999, f. & cert. ef. 8-11-99; PSU 2-2000, f. & cert. ef. 8-1-00; PSU 1-2001, f. & cert. ef. 8-14-01; PSU 2-2003, f. 6-27-03, cert. ef. 7-1-03; PSU 4-2003(Temp), f. & cert. ef. 11-18-03 thru 5-14-04; PSU 1-2004, f. & cert. ef. 8-20-04; PSU 1-2005(Temp), f. & cert. ef. 7-15-05 thru 12-28-05; PSU 3-2005, f. & cert. ef. 12-13-05; PSU 2-2006, f. & cert. ef. 6-30-06; PSU 5-2006(Temp), f. & cert. ef. 8-30-06 thru 1-31-07; Administrative correction, 2-16-07; PSU 3-2007, f. & cert. ef. 7-5-07; PSU 5-2008(Temp), f. 6-13-08, cert. ef. 7-1-08 thru 12-26-08; Administrative correction 1-23-09; PSU 1-2009(Temp), f. & cert. ef. 5-14-09 thru 11-10-09; PSU 2-2009, f. 7-15-09, cert. ef. 8-1-09; PSU 6-2009(Temp), f. & cert. ef. 8-24-09 thru 11-1-09; Administrative correction 11-19-09; PSU 1-2010(Temp), f. 4-5-10, cert. ef. 7-1-10 thru 11-1-10; PSU 2-2010, f. 6-16-10, cert. ef. 8-1-10; PSU 1-2011(Temp), f. 6-10-11, cert. ef. 7-1-11 thru 12-28-11; PSU 2-2011, f. & cert. ef. 9-21-11; PSU 4-2011, f. & cert. ef. 11-10-11; PSU 2-2012, f. & cert. ef. 6-26-12; PSU 2-2013, f. & cert. ef. 5-30-13; PSU 2-2014, f. & cert. ef. 6-23-14

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## Oregon University System, Southern Oregon University Chapter 573

**Rule Caption:** Parking Enforcement and Appeals

**Adm. Order No.:** SOU 3-2014

**Filed with Sec. of State:** 7-2-2014

**Certified to be Effective:** 7-2-14

**Notice Publication Date:** 6-1-2014

**Rules Amended:** 573-050-0025

**Subject:** This amendment in Division 50 edits language to correct subsections of the rule.

**Rules Coordinator:** Treasa Sprague—(541) 552-6319

## 573-050-0025

### Vehicle Permits, Parking Areas and Fee Schedule

(1) All vehicles parked on the University campus are required to display a valid SOU permit when the posted signs require a permit. Faculty/Staff lots are posted yellow; Student Commuter lots are posted green; Resident Student lots are posted red. Parking Services can be contacted for the location where other types of permits may be obtained. Failure to display a permit may result in the issuance of a parking citation. Permits may be purchased during normal office hours at the Enrollment Services Center (ESC) located in Britt Hall. All permits are valid for the current academic year only, unless otherwise designated by Parking Services at the time of issuance; there are no open-ended permits. Permit is defined as any Parking Services sanctioned or issued permit. Examples include: decal, hangtag, guest, special, metered, temporary, courtesy\*, media, or other placard or device issued or developed by Parking Services as needed to facilitate parking of vehicles on Southern Oregon University property. \*(A courtesy permit refers to a Retiree, VIP, or a Volunteer.) Any misuse of these parking permits may cause them to be revoked.

(2) Parking permits and faculty/staff hangtags are serialized for use on specific vehicle(s) with a license plate designated by the purchaser at the time of purchase. Permits (decal) must be affixed outside to left-rear bumper, left-rear body, left-rear window, or rear-side window behind driver of the vehicle where visible. The adhesive on the back of the permit must be the attaching mechanism. Hangtags are to be hung from the rear-view mirror; serialized numbers facing out. Parking Services (at the Enrollment Services Center in Britt Hall) must be informed of changes in vehicles; re-

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registering the hangtags to the appropriate vehicle(s). If a vehicle is disposed of, the permit must be removed and returned to Parking Services.

(3) Parking permits may be purchased for the time period designated on the decals; generally the academic year. The academic year begins and ends in September. Parking permits purchased during the winter, spring, or summer terms are at a proportionately reduced rate.

(4) Faculty/Staff (yellow) parking permits (or hangtags) will be sold to classified employees, graduate assistants, temporary employees who are half-time or more, and faculty. Faculty/staff employees working .50 FTE or less will be eligible for a permit at a reduced rate of one-half the cost of the permit. Hangtags are issued for a three-year period. Faculty/staff hangtags are considered the first permit. They are not to be sold as a second permit. Vehicles displaying a Faculty/Staff permit (yellow) (or hangtag) are authorized to park in designated Faculty/Staff (yellow) parking areas or Student parking areas (red parking areas or green parking areas).

(5) Student Commuter parking (green) permits will be sold to students who live off campus and wish to bring vehicles on campus. Vehicles displaying a Student Commuter permit are authorized to park in designated Student Commuter (green) parking areas.

(6) Residence Hall (red) parking permits will be sold to students living in campus residence halls. Vehicles displaying a Residence Hall permit are authorized to park in designated Residence Hall (red) parking areas.

(7) Second parking permits may be purchased for an additional vehicle if more than one vehicle will be brought to campus. The purchaser must also be the registered owner of the vehicle. Only one permit (the original or second permit) is valid in permit-required lots at a time. If both first and second permits of one person are parked in permit-required lots at the same time, both vehicles will be cited for improper permits. A second permit may not be purchased for a car if the first permit is for a vehicle used in a Residence Hall Parking area, a motorcycle, moped, or scooter.

(8) A replacement permit may be obtained for a damaged, unreadable permit or for a replacement vehicle. The replacement vehicle must be registered to the same owner as the original vehicle. The permit which is being replaced will be considered void and should be returned to Parking Services (at the Enrollment Services Center in Britt Hall) upon purchase of a replacement permit.

(9) Guest permits are available at Parking Services and departmental offices. Guest permits are issued for one day only. Guest permits may not be used in timed or visitor pay meter lots. Guest permits will not be valid if issued to University employees, faculty, students, buses, or vehicles displaying a valid parking permit. Guest permits will not be valid and a citation may be issued for failure to display permit if any of the following information is illegible or omitted:

- (a) Both license number and make or color of vehicle;
- (b) Date that permit is valid;
- (c) Name and telephone extension of departmental personnel issuing the permit.

(10) Carpool parking permits will be sold for the entire school year only if the carpool meets the following criteria:

(a) The carpool must contain at least two registered participants but no more than six.

(b) No more than one vehicle from the carpool is allowed on campus at a particular time. They may not purchase a second permit. However, replacement permits are available if requirements as stated in the regulations for replacement permits are met.

(11) Temporary replacement vehicles for a vehicle with a permit may be brought on campus after obtaining a Substitute Vehicle parking permit from Parking Services. This permit is used for temporary situations of short duration (30 days or less).

(12) Special permits may be approved by Parking Services on an as-needed basis.

(13) Weekly or Daily permits, for those persons who use the campus parking facilities only intermittently, may be purchased at Parking Services (at the Enrollment Services Center in Britt Hall) or may be available in departments that have purchased them for use in special programs or events on campus.

(14) Courtesy (purple), parking permits are available to Emeritus Faculty only. Courtesy (purple), permits are valid for Emeritus Faculty only, not to be used by family or friends. A grandfather clause exists for employees who have already received a purple permit prior to the effective date of this rule. Volunteer board members, designated governmental officials, media representatives, and such others as deemed necessary by the President will have dated and numbered VIP hangtags to facilitate their interaction with the institution. Media representatives will receive dated

and numbered hangtags. Permits may be used only for their intended purpose.

(15) Vendor or Volunteer permits may be obtained through Parking Services.

(a) Commercial permits will be sold to commercial vendors, including vending machine, video game, outside maintenance, travel, office supply, and food vendor companies, and contractors' employees. Companies or departments can purchase a long-term permit for six months or a year. Short-term permits are available for one day or one month. Companies or departments will be billed for the permits by Parking Services.

(b) Volunteer parking permits will be sold to departments for use by volunteers. Departments can purchase long-term permits for one year, short-term permits for less than one month or term-by-term. These permits will be billed by Parking Services to the issuing department. Volunteer permits are not valid if issued to current University employees, faculty or students.

(16) Disabled parking is in accordance with ORS 811.602, 811.605, 811.606, 811.607, and 811.615. Only vehicles displaying a disabled placard or license plate issued and registered at the Motor Vehicles Division (as designated in Rule 573-050-0020) will be allowed to park in spaces posted for use by disabled persons. These vehicles must also display an SOU permit or meter permit unless otherwise posted.

(a) Temporary placards are issued by the Motor Vehicle Division for persons with qualifying temporary disabilities (as provided by ORS 811.606 and 811.640). The requirements for parking on campus apply for all disabled parking listed above.

(b) Vehicles with an appropriate disabled placard or license plate and SOU permit may park in any lot or space without incurring citations, except where the lot or space is designated for parking limited to 60 minutes or less in a parking space reserved for other vehicles, or visitor-pay meter lots.

(17) Refunds will be given for student/staff parking permits for unused academic terms, except summer term. No refunds will be given for year permits that are not used summer term. Refunds will be given upon return of the permit or fragments thereof showing the permit numbers and expiration date. Refund schedules are on file at ESC.

(18) Vehicles displaying valid permits are not guaranteed a parking space on the campus.

(19) Vehicles displaying valid permits are not exempt from timed parking restrictions. Vehicles may park in a timed space or in a metered parking space but must comply with the time limits or metered fee payment of the specific space.

(20) Mopeds, scooters, & motorcycles must have a motorcycle permit and be parked in a motorcycle parking space. If a motorcycle has a full price vehicle parking permit they may park in a vehicle space that corresponds with the color of the permit. Motorcycles may park in timed spaces that are open to the public. Mopeds, scooters, and motorcycles parked in bicycle racks and on the campus grounds will be cited for improper parking. Vehicles parked inside University buildings will be towed at the owner's expense.

(21) If a faculty/staff hangtag is the first legal permit, and a motorcycle is the second vehicle, a decal may be purchased at second decal rate.

(22) If, during the process of issuing a parking citation, the driver of the violating vehicle drives away from the scene, thus preventing the issuing agent from placing the citation on the vehicle, the citation will be entered into the parking system as if it had been placed on the vehicle. When a driver leaves the scene during the issuing process, this will be considered "constructive notice" of the citation.

(23) Vehicles parked facing in the direction against one-way arrows will be cited for improper parking. Vehicles parked on the side of street opposing direction of usual traffic flow will be cited for improper parking.

(24) Vehicles using parking lots marked "Pay Parking" are required to display the serialized meter permit purchased at each lot of this type. Failure to display the meter permit in plain view on the left side of the vehicle's dashboard will result in a citation for failure to display a permit. There is no grace period to obtain change for the permit machine.

(25) Government Vehicles not assigned a permanent parking space may only be parked for a period of 24 hours in Faculty/Staff or Student parking spaces unless permission has been obtained from Parking Services. Vehicles may be liable for enforcement action for non-compliance.

(26) Buses may park where directed by Parking Services.

(27) Fee Schedule:

(a) Carpool, sold for entire school year only: \$135 each pool.

(b) Faculty and staff decal for first-registered vehicle, fall term through summer term: \$150.

(c) Faculty/staff hangtags are issued for a three-year period: \$439.

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(A) This fee is for a one-time purchase. Proration is available for the second and third year.

(B) Payroll deduction is available, plus applicable increases in permit fees.

(d) Student Commuter and Residence Hall decal for first-registered vehicle for only fall term through summer term: \$140.

(e) Motorcycles, mopeds, and scooters, one vehicle only:

(A) Fall term through summer term: \$57.

(B) If motorcycles park in auto spaces, the fee is commensurate with full auto fee for the area.

(f) Second Vehicle permit: \$49.

(A) Second permits will be sold only to Faculty/Staff and Commuter permit holders. Red permit holders may not purchase a second permit.

(B) One second permit is allowed for each full-price (first-registered vehicle) permit purchased.

(C) Replacement permits can be obtained only in accordance with OAR 573-050-0025(8).

(g) Replacement permits or hangtags: \$30.

(h) Lost/stolen permits: \$25.

(i) Departmental Reserved Parking spaces (nonrefundable): \$100 over and above price for regular parking permit and a \$50 fee for each subsequent sign-change after a sign is posted.

(j) Commercial permit, each vehicle:

(A) Long-term, twelve months: \$194.

(B) Long-term, six months: \$115.

(C) Short-term, one month: \$32.

(D) Short-term, daily: \$12.

(k) Weekly parking permits: \$32 per week (available at Housing, and Parking Services).

(l) Daily parking permits: \$12 per day (available at Housing, and Parking Services).

(m) Department Daily Guest Pass booklets: \$48.

(n) Evening and weekend parking in designated lots: \$1.

(o) Visitors pay parking in specified lots: \$1 per hour (lot 12, lot 29 and lot 1.) Lots 27, 30, 32, are \$1.00 per visit after 6 PM and weekends.

(p) Volunteer permit:

(A) Volunteer, each vehicle, long-term, one year: \$8.

(B) Volunteer, each vehicle, short-term, less than one month: \$3.

(q) Handling charges:

(A) Deducting fines from payroll check: \$8.

(B) Out-of-state Department of Motor Vehicles research fee: \$8.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 352.360

Hist.: SOSC 5, f. & ef. 9-2-76; SOSC 4-1979, f. 8-8-79, ef. 9-1-79; SOSC 5-1980, f. & ef. 8-19-80; SOSC 3-1981, f. & ef. 9-9-81; SOSC 4-1982, f. & ef. 7-28-82; SOSC 1-1983, f. & ef. 1-3-83; SOSC 6-1983, f. & ef. 8-23-83; SOSC 2-1984, f. & ef. 8-14-84; SOSC 8-1985, f. & ef. 8-12-85; SOSC 3-1986, f. & ef. 7-22-86; SOSC 5-1987, f. & ef. 9-8-87; SOSC 4-1989, f. & cert. ef. 9-19-89; SOSC 3-1990, f. & cert. ef. 5-31-90; SOSC 4-1991, f. & cert. ef. 6-11-91; SOSC 2-1994, f. & cert. ef. 6-10-94; SOSC 2-1996, f. & cert. ef. 8-2-96; SOU 2-1997, f. & cert. ef. 8-26-97; SOU 2-1998, f. & cert. ef. 7-16-98; SOU 1-1999, f. & cert. ef. 5-7-99; SOU 2-2000, f. & cert. ef. 6-9-00; SOU 1-2001, f. & cert. ef. 4-4-01; SOU 2-2002, f. & cert. ef. 6-28-02; SOU 1-2004, f. & cert. ef. 4-5-04; SOU 3-2006, f. & cert. ef. 6-29-06; SOU 3-2007, f. & cert. ef. 7-23-07; SOU 3-2009, f. 10-1-09, cert. ef. 10-4-09; SOU 3-2010, f. & cert. ef. 6-8-10; SOU 2-2011, f. & cert. ef. 6-13-11; SOU 2-2012, f. & cert. ef. 6-11-12; SOU 3-2013, f. & cert. ef. 6-20-13; SOU 3-2014, f. & cert. ef. 7-2-14

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## Oregon University System, University of Oregon Chapter 571

**Rule Caption:** Repeal of all Chapter 571 Oregon Administrative Rules.

**Adm. Order No.:** UO 1-2014

**Filed with Sec. of State:** 6-26-2014

**Certified to be Effective:** 6-30-14

**Notice Publication Date:** 6-1-2014

**Rules Repealed:** 571-001-0000, 571-001-0005, 571-001-0010, 571-001-0015, 571-001-0020, 571-001-0025, 571-001-0030, 571-001-0035, 571-001-0040, 571-001-0045, 571-001-0050, 571-002-0000, 571-002-0005, 571-002-0010, 571-002-0015, 571-002-0020, 571-002-0022, 571-002-0025, 571-002-0030, 571-002-0035, 571-002-0040, 571-002-0045, 571-003-0000, 571-003-0001, 571-003-0003, 571-003-0004, 571-003-0005, 571-003-0006, 571-003-0007, 571-003-0015, 571-003-0016, 571-003-0017, 571-003-0020, 571-003-0025, 571-003-0100, 571-003-0105, 571-003-0110, 571-003-0115, 571-003-0120, 571-003-0125, 571-004-0005, 571-004-0007, 571-004-0010, 571-004-0015, 571-004-0016, 571-004-0020, 571-004-

0025, 571-004-0030, 571-004-0037, 571-004-0045, 571-004-0050, 571-004-0055, 571-010-0005, 571-010-0010, 571-010-0015, 571-010-0020, 571-010-0025, 571-010-0030, 571-010-0035, 571-010-0040, 571-010-0045, 571-010-0050, 571-010-0055, 571-010-0060, 571-010-0065, 571-010-0070, 571-010-0075, 571-010-0080, 571-010-0085, 571-010-0090, 571-010-0095, 571-010-0100, 571-010-0110, 571-010-0120, 571-010-0130, 571-010-0140, 571-011-0005, 571-011-0010, 571-011-0015, 571-011-0020, 571-011-0025, 571-020-0100, 571-020-0110, 571-020-0120, 571-020-0130, 571-020-0140, 571-020-0150, 571-020-0160, 571-020-0170, 571-020-0180, 571-020-0190, 571-020-0200, 571-020-0210, 571-020-0220, 571-020-0230, 571-020-0240, 571-020-0250, 571-021-0100, 571-021-0105, 571-021-0110, 571-021-0115, 571-021-0120, 571-021-0125, 571-021-0130, 571-021-0140, 571-021-0150, 571-021-0160, 571-021-0165, 571-021-0200, 571-021-0205, 571-021-0210, 571-021-0215, 571-021-0220, 571-021-0230, 571-021-0240, 571-021-0250, 571-022-0005, 571-022-0010, 571-022-0015, 571-022-0020, 571-022-0025, 571-022-0026, 571-022-0027, 571-022-0060, 571-022-0065, 571-022-0070, 571-022-0080, 571-022-0100, 571-022-0105, 571-023-0000, 571-023-0005, 571-023-0025, 571-023-0100, 571-023-0105, 571-023-0110, 571-023-0115, 571-023-0120, 571-024-0005, 571-030-0005, 571-030-0010, 571-030-0015, 571-030-0020, 571-030-0025, 571-030-0030, 571-030-0035, 571-030-0040, 571-030-0045, 571-030-0050, 571-050-0005, 571-050-0011, 571-050-0020, 571-050-0025, 571-050-0030, 571-050-0035, 571-051-0005, 571-051-0010, 571-060-0005, 571-060-0010, 571-060-0015, 571-060-0020, 571-060-0025, 571-060-0040, 571-100-0000, 571-100-0010, 571-100-0020, 571-100-0030, 571-100-0040, 571-100-0050, 571-100-0060, 571-100-0070, 571-100-0080, 571-100-0090, 571-100-0100, 571-100-0110, 571-100-0120, 571-100-0130, 571-100-0140, 571-100-0150, 571-100-0160

**Subject:** The University of Oregon is repealing all Chapter 571 Oregon Administrative Rules. These rules will be adopted as University Policies with the full force of law as of July 1, 2014.

**Rules Coordinator:** DeAnna Heying—(541) 346-3037

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## Parks and Recreation Department Chapter 736

**Rule Caption:** Align State Scenic Waterway Rules with Federal Wild and Scenic Rules

**Adm. Order No.:** PRD 2-2014

**Filed with Sec. of State:** 7-1-2014

**Certified to be Effective:** 7-1-14

**Notice Publication Date:** 5-1-2014

**Rules Amended:** 736-040-0065, 736-040-0070

**Subject:** Some Oregon Scenic Waterways are also designated as federal Wild and Scenic Rivers. Federal regulations have been adopted that govern recreational use on the Wild and Scenic Rivers. Those federal regulations are not enforceable by state law enforcement officers unless they have also been adopted in Oregon Administrative Rules through the Scenic Waterway program. These proposed amendments to the chapter 736, division 40 rules are aligning state rules on the John Day and Deschutes rivers with federal regulations already in place. The rules being adopted do not impose any additional regulations on river users.

**Rules Coordinator:** Vanessa DeMoe—(503) 986-0719

### 736-040-0065

#### John Day River Scenic Waterway

(1) Natural River Area:

(a) That segment of the scenic waterway beginning at the intersection of the John Day River with the township line between Township 5 South and Township 6 South, Willamette Meridian, at about river mile 95, thence downstream approximately 51.7 miles to the intersection of the John Day River with the southern section line of Section 30, Township 1 South, Range 19 East, Willamette Meridian, (Section 30, T 1S, R 19E, W.M.) at about river mile 43.3, is classified as a Natural River Area;

(b) This Natural River Area shall be administered consistent with the standards set by OAR 736-040-0035 and 736-040-0040(1)(a)(C). In addi-

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tion to these standards, all new development in resource zones (i.e. farm-related dwellings) shall comply with Gilliam County or Sherman County land use regulations.

(c) New structures and associated improvements shall be totally screened from view from the river by topography, vegetation, or a combination thereof, except as provided under OAR 736-040-0030(5), and except those minimal facilities needed for public outdoor recreation or resource protection. If inadequate topographic or vegetative screening exists on the site, the structure or improvement may be permitted if native vegetation can be established to provide total screening of the proposed structure or improvement within a reasonable time (4–5 years). The condition of “total screening,” as used in section (1) of this rule, shall consist of adequate topography, density and mixture of native evergreen and deciduous vegetation, or a combination thereof to totally obscure (100 percent) the subject improvement.

(d) Commercial public service facilities, including resorts and motels, lodges and trailer parks which are visible from the river, shall not be permitted.

(e) New mining operations, except recreational placer mining and recreational prospecting, as those terms are defined and used in ORS 390.835, and similar improvements, shall be permitted only when they are totally screened from view from the river by topography, vegetation, or a combination thereof. If inadequate topographic or vegetative screening exists to totally screen the proposed mining site, the mining operation may be permitted if native vegetation can be established to provide total screening of the proposed mining site within a reasonable time (4–5 years).

(f) New roads may be permitted only when totally screened from view from the river by topography, vegetation, or a combination thereof. If inadequate topographic or vegetative screening exists to totally screen the proposed road, the road may be permitted if acceptable topography can be created or road design techniques used to totally screen the road at the time of construction or native vegetation can be established to provide total screening of the proposed road within a reasonable time (4–5 years).

(g) Where existing roads are visible from the river, major extensions, realignments, or upgrades to existing roads shall not be permitted. Necessary minor road improvements shall be substantially screened from view from the river. If inadequate topography or vegetation exists to substantially screen the road improvement, the road improvement may be permitted if acceptable topography can be created or road design techniques used to substantially screen the road at the time of construction or native vegetation can be established to provide substantial screening of the road improvement within a reasonable time (4–5 years). The condition of “substantial screening,” as used in section (1) of this rule, shall consist of adequate topography, density and mixture of native, evergreen and deciduous vegetation, or a combination thereof to substantially obscure (at least 75 percent) the subject improvement. When an existing road is regraded, no side cast into or visible from the river shall be allowed. Excess material shall be hauled to locations out of view from the river.

(h) Visible tree harvest or other vegetation management may be permitted provided that:

(A) The operation complies with the relevant Forest Practices Act rules;

(B) Harvest and management methods with low visual impact are used;

(C) The harvest or vegetation management does not degrade the riparian buffer of any waterway; and

(D) The harvest or vegetation management is designed to enhance the scenic view within a reasonable time (5–10 years). For the purposes of this paragraph, “enhance” means to benefit forest ecosystem function and vegetative health by optimizing forest stand densities and vegetative composition, fostering forest landscape diversity and promoting sustainable forest values.

(i) Improvements needed for public recreation use or resource protection may be visible from the river, but shall be primitive in character and designed to blend with the natural character of the landscape.

(j) Proposed utility facilities shall share existing utility corridors, minimize any ground and vegetation disturbance, and employ non-visible alternatives when reasonably possible.

(k) Whenever the standards of OAR 736-040-0035 and section (1), subsections (a) through (j) of this rule, are more restrictive than the Gilliam and Sherman County Land Use and Development Ordinances, the above Oregon Administrative Rules shall apply.

(2) Scenic River Areas: Two segments of the John Day River main stem are designated as Scenic River Areas:

(a) That segment of scenic waterway beginning at the confluence of Service Creek at about river mile 157.4 and extending downstream approximately 62.4 miles to the intersection of the John Day River with the township line between Township 5 South and Township 6 South, Willamette Meridian, at about river mile 95, is classified as a Scenic River Area;

(b) That segment of scenic waterway beginning at the intersection of the John Day River with the southern section line of Section 30, Township 1 South, Range 19 East, Willamette Meridian, (Section 30, T 1S, R 19E, W.M.) at about river mile 43.3 and extending approximately 33.3 miles downstream to Tumwater Falls, at about river mile 10, is classified as a Scenic River Area.

(c) These Scenic River Areas shall be administered consistent with the standards set by OAR 736-040-0035 and 736-040-0040(1)(b)(B). In addition to these standards, all new development in resource zones (i.e. farm related dwellings) shall comply with Sherman County, Gilliam County, Wasco County, Wheeler County, or Jefferson County land use regulations, whichever applies.

(d) New structures and associated improvements shall be substantially screened by topography, native vegetation, or a combination thereof, except as provided under OAR 736-040-0030(5), and except for those minimal facilities needed for public outdoor recreation or resource protection. If inadequate topographic or vegetative screening exists on a site, the structure or improvement may be permitted if native vegetation can be established to provide substantial screening of the proposed structure or improvement within a reasonable time (4–5 years). The condition of “substantial screening,” as used in section (2) of this rule, shall consist of adequate topography, density and mixture of native, evergreen and deciduous vegetation, or a combination thereof to substantially obscure (at least 75 percent) the viewed structure or improvement.

(e) Commercial public service facilities, including resorts and motels, lodges and trailer parks which are visible from the river, shall not be permitted.

(f) New mining operations, except recreational placer mining and recreational prospecting, as those terms are defined and used in ORS 390.835, and similar improvements, shall be permitted only when they are totally screened from view from the river by topography, vegetation, or a combination thereof. If inadequate topographic or vegetative screening exists on a site, mining and similar forms of development may be permitted if native vegetation can be established to provide total screening of the affected area within a reasonable time (4–5 years). The condition of “total screening,” as used in section (2) of this rule, shall consist of adequate topography, density and mixture of native, evergreen and deciduous vegetation, or a combination thereof to totally obscure (100 percent) the subject improvement.

(g) New roads may be permitted only when totally screened from view from the river by topography and/or vegetation. If inadequate topographic or vegetative screening exists to totally screen the proposed road, the road may be permitted if acceptable topography can be created or road design techniques used to totally screen the road at the time of construction or native vegetation can be established to provide total screening of the proposed road within a reasonable time (4–5 years).

(h) Where existing roads are visible from the river, extensions, realignments, upgrades, or other improvements, shall only be permitted when substantially screened from view from the river. If inadequate topography or vegetation exists to provide substantial screening, the road improvement may be permitted if acceptable topography can be created or road design techniques used to substantially screen the road at the time of construction or native vegetation can be established to provide substantial screening of the subject improvement within a reasonable time (4–5 years). When an existing road is improved or regraded, no side cast into or visible from the river shall be allowed. Excess material shall be hauled to locations out of view from the river.

(i) Visible tree harvest or other vegetation management may be allowed provided that:

(A) The operation complies with the relevant Forest Practices Act rules;

(B) Harvest and management methods with low visual impact are used;

(C) The harvest or vegetation management does not degrade the riparian buffer of any waterway; and

(D) The harvest or vegetation management is designed to enhance the scenic view within a reasonable time (5–10 years). For the purposes of this paragraph, “enhance” means to benefit forest ecosystem function and vegetative health by optimizing forest stand densities and vegetative composition.

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tion, fostering forest landscape diversity and promoting sustainable forest values.

(j) Improvements needed for public recreation use or resource protection may be visible from the river, but shall be primitive in character and designed to blend with the natural character of the landscape.

(k) Proposed utility facilities shall share existing utility corridors, minimize any ground and vegetation disturbance, and employ non-visible alternatives when reasonably possible.

(l) Whenever the standards of OAR 736-040-0035 and section (2), subsections (a) through (k) of this rule are more restrictive than the applicable County Land Use Development Ordinances, the above Oregon Administrative Rules shall apply.

### (3) Recreational River Area:

(a) That segment of scenic waterway beginning at the confluence of Parrish Creek, at about river mile 168.7, about one mile west of Spray and extending downstream approximately 11.3 miles to the confluence of Service Creek, at about river mile 157.4, is classified as a Recreational River Area.

(b) The department shall administer this Recreational River Area consistent with the standards set by OAR 736-040-0035 and 736-040-0040(1)(c)(B). In addition to these standards, all new development in resource zones (i.e. farm and forest related dwellings) shall comply with Wheeler County land use regulations.

(c) New structures and associated improvements shall be moderately screened from view from the river by topography, vegetation, or a combination thereof, except as provided by OAR 736-040-0030(5) and except those minimal facilities needed for public outdoor recreation or resource protection. If inadequate topographic or vegetative screening exists on a site, the structure or improvement may be permitted if native vegetation can be established to provide moderate screening of the proposed structure or improvement within a reasonable time (4-5 years). The condition of "moderate screening," as used in section (3) of this rule, shall consist of adequate topography; density and mixture of native, evergreen and deciduous vegetation; or a combination thereof to moderately obscure (at least 50 percent) the viewed improvement or structure.

(d) Commercial public service facilities, including resorts and motels, lodges and trailer parks which are visible from the river, shall not be permitted.

(e) New mining operations, except recreational placer mining and recreational prospecting, as those terms are defined and used in ORS 390.835, and similar improvements, shall be permitted only when they are totally screened from view from the river by topography, vegetation, or a combination thereof. If inadequate topographic or vegetative screening exists on a site, mining and similar forms of development may be permitted if native vegetation can be established to provide total screening of the affected area within a reasonable time (4-5 years). The condition of "total screening," as used in section (3) of this rule, shall consist of adequate topography; density and mixture of native, evergreen and deciduous vegetation; or a combination thereof to totally obscure (100 percent) the altered improvement site.

(f) New roads constructed for agricultural use, mining or residential use shall be moderately screened with vegetation, topography, or a combination thereof. If existing topographic or vegetative screening is inadequate, the road may be permitted if acceptable topography can be created or road design techniques used to moderately screen the road at the time of construction or native vegetation can be established to provide moderate screening of the road within a reasonable time (4-5 years).

(g) Where existing roads are visible from the river, extensions, realignments, upgrades, or other improvements, shall only be permitted when partially screened from view from the river. If inadequate topography or vegetation exists to provide partial screening, the road improvement may be permitted if acceptable topography can be created or road design techniques used to partially screen the road at the time of construction or native vegetation can be established to provide partial screening of the subject improvement within a reasonable time (4-5 years). The condition of "partial screening," as used in section (3) of this rule shall consist of adequate topography; density and mixture of native, evergreen and deciduous vegetation; or a combination thereof to partially obscure (at least 30 percent) views of the road improvement. When an existing road is improved or regraded, no side cast into or visible from the river shall be permitted. Excess material shall be hauled to locations out of view from the river.

(h) Visible tree harvest or other vegetation management may be allowed provided that:

(A) The operation complies with the relevant Forest Practices Act rules;

(B) Harvest and management methods with low visual impact are used;

(C) The harvest or vegetation management does not degrade the riparian buffer of any waterway; and

(D) The harvest or vegetative management is designed to enhance the scenic view within a reasonable time (5-10 years). For the purposes of this paragraph, "enhance" means to benefit forest ecosystem function and vegetative health by optimizing forest stand densities and vegetative composition, fostering forest landscape diversity and promoting sustainable forest values.

(i) Improvements needed for public recreation use or resource protection may be visible from the river, but shall be primitive in character and designed to blend with the natural character of the landscape.

(j) Proposed utility facilities shall share existing utility corridors, minimize any ground and vegetation disturbance, and employ non-visible alternatives when reasonably possible.

(k) Whenever the standards of OAR 736-040-0035 and section (3), subsections (c) through (j) of this rule are more restrictive than Wheeler County Land Use and Development Ordinances, the above Oregon Administrative Rules shall apply.

### (4) Public Use of the John Day River Scenic Waterway

(a) Policy: The Commission finds that in order to protect and enhance the John Day River Scenic Waterway's unique aesthetic, scenic, fish and wildlife, scientific and recreational features, and because these outstanding and unique features caused this river segment of river to be designated by the people of Oregon as a scenic waterway, it is necessary to adopt rules for public recreation use of the lands and waters within this scenic waterway area. These rules have as their basis the need to protect and preserve the waterway's outstanding scenic beauty and natural features while maintaining the river's wide range of recreational opportunities. Therefore, in accordance with the management requirements of ORS 390.845, persons using the John Day River Scenic Waterway for recreation purposes shall comply with these rules. These rules are in addition to other rules of the Commission adopted for the management of all scenic waterways. Where more restrictive or specific than the general rules, these rules will prevail over the general rules 'except in the instance of private property owners where only OAR 736 -040-0035 (Rules for Land Management) or this rule shall apply.

(b) Nothing in these rules gives to any person any right to trespass on the private property of others or in any way alters the rights of private property owners in regards to trespass.

(c) Definitions: For purposes of this rule, the following definitions shall apply:

(A) "Approved portable toilet system" means a non-biodegradable, rigid, durable container designed to receive and hold human waste in any container position without leaking, or human waste bags.

(B) "Boat" means every description of watercraft, including a sea-plane on the water and not in flight, used or capable of being used as a means of transportation on the water, but does not include boathouses, floating homes, air mattresses, beach and water toys or single inner tubes.

(C) "Camping" means erecting a tent or creating a shelter of natural or synthetic material, preparing a sleeping bag or other bedding material for use, or parking a motor vehicle, motor home or trailer, or mooring a boat, or other action for the apparent purpose of overnight occupancy.

(D) "Developed Recreation Area/Developed Recreation Site" means an area or site that contains structures or capital improvements primarily used by the public for recreational purposes. These may include such features as: delineated spaces for parking, camping or boat launching; sanitary facilities; grills or fire rings; tables; or controlled access.

(E) "Developed Toilet Facility" means a vault type toilet provided by the Bureau of Land Management or the State of Oregon.

(F) "Display Intent To Remain Overnight" means any off-loading onto the riverbank, or preparing for use, common overnight camping equipment such as tents, sleeping bags or bedding, food, cooking or dining equipment, or lighting equipment, or to prepare common camping equipment for use in or on any boat.

(G) "Firearm" means a weapon, by whatever name known, which is designed to expel a projectile by the action of powder and is readily capable of use as a weapon.

(H) "Group" means any number of persons affiliated together with a common goal to recreate with each other in activities such as rafting, eating, camping, or swimming.

(I) "Group Size Limit" means the maximum number of persons a boating group may have with while together within the John Day River Scenic Waterway, regardless of the number of persons covered by each

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boater registration form or required permit possessed by members of the group.

(J) "Human Waste Bag" means a commercially available sanitary bag designed to securely contain human waste and odor. The bag contains enzymes to break down waste into a deodorized gel and is approved by the Department of Environmental Quality for deposit into a landfill.

(K) "John Day River Scenic Waterway" means that portion of the John Day River designated in ORS 390.826(7) as a State Scenic Waterway. The portion of the John Day River Scenic Waterway that is affected by this rule (OAR 736-040-0065) covers the section from Parrish Creek downstream to Tumwater Falls. The Scenic Waterway also includes all water and lands within 1.4 mile of the bank on either side of the river.

(L) "Personal Watercraft" means a motorboat, less than 16 feet, propelled by machinery which:

(i) Uses an outboard motor or an inboard motor powering a water jet pump as its primary source of power; and

(ii) Is designed to be operated by a person sitting, standing or kneeling on, rather than in the conventional manner of sitting or standing inside the vessel.

(M) "Refuse" means, but is not limited to, wastewater, sewage, litter, trash, garbage, scraps, remnants of water balloons or clay pigeons, charcoal, ash, cigarette butts, or burned debris.

(N) "Vehicle" means a motor-propelled means of transportation across land usually wheeled meant to carry one or more human being(s) regardless of design, including Off-Road Vehicles.

(d) Permits:

(A) Every boater or boating group shall obtain a John Day River boater permit prior to launching. The permit shall be carried by the boater, or group leader, and shall be readily available for inspection upon request by authorized agency and law enforcement personnel. Information requested on the permit shall be completely and accurately filled out and the form or permit shall be signed by the permit holder in order to be valid. Permit holders shall abide by the requirements of the permit and the permit stipulations.

(B) Every person landing, operating or riding in a boat or engaging in any camping, fishing or other activity in connection with being transported by a boat on any portion of the John Day River Scenic Waterway where a Bureau of Land Management permit is required, shall display his/her individual or group registration permit upon the demand of any law enforcement officer, Bureau of Land Management or department employee who is authorized to enforce these rules.

(e) Campfires, Fuel, Firepans and Smoking:

(A) Building, igniting, maintaining, using, tending a fire, or being within 20 feet of an illegal campfire, charcoal fire, portable propane campfire device or any other type of open flame is prohibited June 1 through September 30. The Oregon Department of Forestry may extend periods of fire closure if conditions warrant. When not prohibited, fire shall be contained in a firepan or similar device of metal. A firepan is a metal container with sides at least two inches high to prevent ashes or burning material from spilling onto the ground.

(B) Commercially manufactured metal camp stoves and lanterns. Are permissible for outdoor use only when fueled with bottled liquefied petroleum gas (e.g. propane) or liquid gas. Such stove or lanterns shall be operated in a responsible manner at all times.

(C) A person may not chop, saw, break, cut, burn or gather wood or other combustible material from any live or standing tree.

(D) All fires shall be completely extinguished after use. The extinguished remains, including all ash, wood or charcoal residue, partially consumed briquettes, and burned refuse shall be taken out of the scenic waterway for disposal or deposited in a proper garbage receptacle provided at recreation sites or litter collection stations.

(E) Smoking shall be limited to non-public buildings, closed vehicles, while in boats on the water or while standing in the water.

(f) Camping:

(A) A person may not leave camping equipment or personal property overnight at or in an unoccupied, public campsite as a means to claim, hold, reserve or secure the site for subsequent occupancy by the same person, or their friends, clients, business associates, or clients of business associates. For the purposes of this paragraph, unoccupied means the absence of human presence during the period one hour after legal sunset to one hour before legal sunrise.

(B) A person may not pay for a public campsite, which is not to be occupied by that same person, as a means to claim, hold, reserve or secure the site for subsequent occupancy by their friends, clients, business associates, or clients of business associates. For the purposes of this paragraph,

unoccupied means the absence of human presence during the period one hour after legal sunset to one hour before legal sunrise.

(C) Groups occupying any campsite may not exceed the maximum number of persons or vehicles allowed for that campsite.

(D) Every person or group occupying a campsite shall display his/her individual or group camping permit upon the demand of any law enforcement officer, Bureau of Land Management or Oregon Parks and Recreation Department employee who is authorized to enforce these rules.

(E) Occupants shall not dig or otherwise level the ground within public campsites.

(F) No person shall possess or leave refuse, debris, or litter in an exposed, unsightly, or unsanitary condition.

(g) Firearms: The discharge of firearms is prohibited within the John Day River Scenic Waterway except with a valid Oregon hunting license and tag during authorized hunting seasons. The discharge of firearms is prohibited within the John Day River Scenic Waterway at any time within a developed recreation area.

(h) Litter and Personal Sanitation:

(A) All persons shall place refuse in proper receptacles provided for that purpose at maintained recreation sites or litter collection stations. No such refuse or similar materials shall be buried, abandoned, or burned. When no approved receptacle or container is available, the material shall be taken out of the scenic waterway for proper disposal.

(B) All persons shall use the developed toilet facilities provided at public recreation sites. An approved portable toilet shall be carried and used by boating individuals and groups within the John Day River Scenic Waterway.

(C) All persons shall use either an approved portable toilet, which includes the use of human waste bags, or developed toilet facility to contain all human solid waste.

(D) All persons who remain, intend to remain, or display intent to remain overnight in a boat in camp site shall set up an approved portable toilet, ready for use, as soon as practical upon landing at the camping site to be occupied.

(E) No person shall leave, deposit, or scatter human waste, toilet paper, or items used at toilet paper, on the ground within the John Day River Scenic Waterway.

(F) While within the John Day River Scenic Waterway, portable toilets shall only be dumped at facilities developed and identified especially for that purpose. Used human waste bags must be carried in a leak-proof container and disposed of in a trash receptacle according to manufacturer instructions.

(G) A person may not wash dishes or use soap in the river or any tributaries or less than fifty feet from any natural water source.

(H) Vehicle Restrictions:

(i) a person may not ride or allow another person to ride in or on top of a boat or boats within or on the back of any open bed motor vehicle, or on a boat or boats loaded on the top of any other motor vehicle. A person or persons may ride within a single boat that is properly secured by ropes or straps within the bedrails of a pickup truck, or properly secured as above on the bed of a flatbed motor vehicle. A person may not ride on the exterior or portion of any motor vehicle within the John Day River Scenic Waterway.

(ii) A person may not operate a vehicle with a load which is unsecured, unsafe, or otherwise presents a hazard to the public.

Stat. Auth.: ORS 390.124 & 390.845(2)

Stats. Implemented: ORS 390.845(2) & 390.826(7)

Hist.: HC 1285, f. 6-27-72; PRD 10-2000, f. & cert. ef. 9-1-00; PRD 2-2014, f. & cert. ef. 7-1-14

## 736-040-0070

### Deschutes River Scenic Waterway

(1) Deschutes River Scenic Waterway Recreation Area:

(a) ORS 390.932 creates the Deschutes River Scenic Waterway Recreation Area. ORS 390.934 directs the Department to adopt a management plan by rule to administer the Deschutes River Scenic Waterway Recreation Area. ORS 390.124 authorizes the Commission to adopt rules to carry out the duties, functions and powers imposed by law upon the Commission and the Department.

(b) Pursuant to ORS 390.934, the Commission adopts by reference the Lower Deschutes River Management Plan and Environmental Impact Statement, Volume 1 (January 1993), and the Supplement to the Lower Deschutes River Management Plan, Final Decision, Lower Deschutes River Allocation System, (June 1997) as the management plan for the Deschutes River Scenic Waterway Recreation Area. Copies of the Lower Deschutes River Management Plan and the Supplement to the Lower

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Deschutes River Management Plan, Final Decision. Lower Deschutes River Allocation System are available from the Oregon Parks and Recreation Department, 725 Summer St N.E., Suite C, Salem, OR 97301.

(c) The state managing agencies, including the Department, Department of Fish and Wildlife, Oregon State Marine Board, and Oregon State Police and the local managing agencies, including Sherman, Wasco and Jefferson Counties and the City of Maupin shall perform their management responsibilities relating to the Deschutes River Scenic Waterway Recreation area according to the management plan adopted by this rule and ORS 390.805 to 390.925 and 390.930 to 390.940.

(d) The Confederated Tribes of Warm Springs and the Bureau of Land Management are encouraged to exercise their jurisdiction and to manage their lands in a manner consistent with the management plan adopted by section (3) of this rule and with ORS 390.805 to 390.925 and 390.930 to 390.940.

## (2) Recreational River Area:

(a) The segment of the scenic waterway extending from the Deschutes River intersection with the northerly extension of the common section line of Section 29 and Section 30, Township 9 South, Range 13 East, of the Willamette Meridian, (T 9S, R 13E, W.M.), Jefferson County, downstream approximately 96 miles to the Columbia River, but excluding the right bank shoreline (as seen when facing downstream) and adjacent lands opposite the City of Maupin, as its boundaries were established on December 3, 1970, is classified as a Recreational River Area.

(b) Within the Recreation River Area described in subsection (2)(a), the Department may not permit any new structures or improvements which are visible from the river, other than those erected or made in connection with compatible existing uses, or those needed for public outdoor recreation or resource protection.

(c) Additional dwellings, other than those necessary to existing agricultural uses, and commercial public service facilities, including resorts and motels and lodges which are visible from the river, will not be permitted.

## (3) River Community Areas:

(a) The segment of the scenic waterway extending from Pelton Regulating Dam downstream approximately four miles to the Deschutes River intersection with the northerly extension of the common section line of Section 29 and Section 30, Township 9 South, Range 13 East, of the Willamette Meridian (T 9S, R 13E, W.M.), Jefferson County, is classified as a River Community Area. The shoreline and related adjacent lands opposite the City of Maupin, as its boundaries were established on December 3, 1970, is likewise classified as a River Community Area.

(b) Within the River Community Areas described in subsection (3)(a), when consistent with Jefferson County and Wasco County zoning ordinances, the Department may permit uses and structures including agriculture, single-family and multiple-family dwellings, churches, lodges, resorts, motels, transient public trailer parks, and necessary public service facilities. The Commission may establish allowed densities of improvements and structures which are visible from the river after consultation with the appropriate county planning commission, the State Fish and Wildlife Commission, the U.S. Bureau of Land Management, the City of Maupin or the Warm Springs Confederated Tribes and such other persons and agencies as the Commission may select.

## (4) Public use of the Deschutes River Scenic Waterway:

(a) Policy: The Commission finds that in order to protect and enhance the Deschutes River Scenic Waterway's unique aesthetic, scenic, fish and wildlife, scientific and recreational features, and because these outstanding and unique features caused this river segment to be designated by the people of Oregon as a scenic waterway, it is necessary to adopt rules for public recreation use of the lands and waters within this scenic waterway area. These rules have as their basis the need to protect and preserve the waterway's outstanding scenic beauty and natural features while maintaining the river's wide range of recreational opportunities. Therefore, in accordance with the management requirements of ORS 390.845, the following rules shall be adhered to by persons using the Deschutes River Scenic Waterway for recreation purposes. These rules are in addition to other rules of the Commission promulgated for the management of all scenic waterways. Where more restrictive or specific than the general rules, these rules will prevail over the general rules except in the instance of private property owners where only OAR 736-040-0035 (Rules for Land Management) or this rule shall apply.

## (b) Restricted Areas:

(A) All persons using the Deschutes River Scenic Waterway shall be advised that the Confederated Tribes of the Warm Springs Reservation of Oregon have closed all Reservation lands to public use except by permit. This closure, enacted by the Confederated Tribes, also affects all islands

west of the middle of the river between the Pelton re-regulating dam and the north boundary of the Reservation near Two Springs Ranch at the power boat deadline.

(B) All persons using the Deschutes River Scenic Waterway shall be advised that the Confederated Tribes of the Warm Springs Reservation of Oregon own the east and west banks of the Deschutes River between Sandy Beach and the State Route 16 bridge crossing downstream from Sherars Falls. Sandy Beach shall be the last designated boat take out upstream from Sherars Falls. The banks of the Deschutes River from Sandy Beach downstream to the State Route 16 bridge crossing, including the former take out on the west bank of the Deschutes River immediately upstream from Sherars Falls, shall be closed to boat put in or take out. Plan at page 74.

(C) All persons using the Deschutes River Scenic Waterway shall be advised that the Deschutes River from the upstream end of Rattlesnake Rapids at about river mile 2.5 and extending downstream to the no wake zone at the downstream end of Moody Rapids at about river mile .5 is a pass through zone. All floating craft, except float tubes, shall pass through this segment of river and shall not stop along or tie up to the riverbank except in the event of an emergency. Plan at pages 58-60.

(D) Nothing in these rules gives to any person any right to trespass on the private property of others or in any way alters the rights of private property owners in regards to trespass.

(c) Definitions: For purposes of this rule, the following definitions shall apply:

(A) "Camping" means overnight occupation within the Deschutes River Scenic Waterway.

(B) "Day Use" means human presence within the Deschutes River Scenic Waterway between the hours of one hour before sunrise to 10:00 PM.

(C) "Designated Non-Fee Site" means a marked and designated campsite for which no fee is charged. The Deschutes River Managers shall designate river segments or zones where non-fee camping is allowed only in designated sites.

(D) "Fee Sites" means a marked and designated drive-in or developed camp site for which a fee is charged. Any reference in this rule, or OAR 736-040-0071, to drive-in or developed sites shall have the same meaning as Fee Site.

(E) "Group" as used in this rule means a party of two or more persons while present within the Deschutes River Scenic Waterway.

(F) "Group Site" as used in this rule means a fee site, designated non-fee site, or any other site designated by the Managing Agencies as a group site. Group sites shall be designated for use by nine persons or more, up to the maximum site capacity as designated by the Managing Agencies. Where no maximum capacity is designated, the maximum capacity shall be the maximum group size for the river segment.

(G) "Non-Fee Site" means a campsite for which a fee is not charged. As used in this rule, all references to undeveloped campsites or undeveloped sites have the same meaning as non-fee sites.

(H) "Occupied Non-Designated and/or Designated Non-Fee Boat-In Campsite" as used in this rule means the presence of at least one person for each campsite, who, if not physically present within the campsite, prominently displays in a readily legible manner, within the campsite, the person's name and boater pass number, or if the person is covered under a group pass, the person's name and the name and boater pass number of the group leader.

(I) "Overnight Occupation" means human presence between the hours of 10:00 PM and one hour before sunrise.

(J) "Recreation Site" means a marked and designated, general camping or activity area as designated by the Deschutes River Scenic Waterway Managers, or a public agency or political subdivision of the state. A recreation site shall generally contain individual campsites or a day use area.

(K) "Unoccupied" as used in this rule means the absence of human presence during the period one hour after legal sunset to one hour before legal sunrise.

(L) "Walk-In Fee Site" means a marked and designated fee site in which the main recreation site is designated to be accessed by vehicle or boat. The individual campsite is generally a satellite campsite accessed on a walk-in basis from the main recreation site. Vehicle access is prohibited.

## (d) Camping:

(A) Overnight camping is prohibited on all islands. Plan at page 63.

(B) Overnight camping length of stay shall be limited to:

(i) Four nights in undeveloped sites. Plan at page 63;

(ii) Fourteen nights in developed sites. Plan at page 63;

(iii) Nine nights for motorized boats between May 15 and October 15 in those areas where they are allowed. Plan at page 63.

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(iii) Any camp established through the use of a motorized boat between June 15th and September 30th shall be entirely removed from the river along with the motorized boat during those periods of time that motorized boat use is restricted under OAR 250-030-0030 (See Lower Deschutes River Motor Boat Closure Schedule)

(C) No person shall leave camping equipment or personal property overnight at or in an unoccupied, public, non-fee, campsite as a means to claim, hold, reserve or secure the site for subsequent occupancy by the same person, or their friends, clients, business associates, or clients of business associates. For the purposes of this paragraph, unoccupied means the absence of human presence during the period one hour after legal sunset to one hour before legal sunrise.

(D) At the end of a consecutive four night, overnight camping length of stay specified in subparagraph (4)(d)(B)(i) of this rule, all camping equipment and personal property shall be removed from the area and cannot be relocated within 1/4-mile of the same site for a period of at least 14 nights. Plan at page 63.

(E) Between May 15 and October 15, whenever motorized boaters vacate a campsite and it will be unoccupied as that term is defined in paragraph (4)(d)(C) of this rule, all camping and personal property shall be removed from the area and cannot be relocated within 1/4 mile of the same site for a period of at least 14 nights.

(F) Group size within the Deschutes River Scenic Waterway will be limited to 16 persons in segments 1, 3 and 4, and 24 persons in segment 2.

(G) Overnight camping group size shall be determined by the size and capability of the site. In no case shall group size exceed 16 people per site in Segments 1, 3 or 4 and 24 in Segment 2. Plan at page 63.

(H) Overnight occupancy in vehicle accessible public areas of the Deschutes Scenic Waterway will be allowed within designated fee sites only.

(I) Overnight occupancy within river areas that are managed as designated non-fee camping zones will be permitted only within designated and marked non-fee sites. Non-fee areas of river segment 1 are designated non-fee zones.

(J) Any group occupying fee or designated non-fee sites is required to abide by the designated capacity of the site. No group leader shall allow violation of this rule by any member of his/her group.

(K) Any group occupying fee or designated non-fee sites shall be required to contain all group and personal equipment within the site. Where a site boundary is marked, all group and personal equipment shall be contained within those boundaries. Where no site boundary is provided, all group and personal equipment shall be contained within a line 1/2 the distance between site designation markers. As far as is practical, all camping equipment such as tents and tables shall be erected or used within the most impacted core area of the site.

(L) Groups shall, as far as practical, occupy fee and designated non-fee sites that display a capacity that generally corresponds with the size of the group. As far as practical, small groups shall not occupy large capacity sites.

(M) Groups of eight persons or less, except in an emergency, are prohibited from occupying designated group sites.

(N) All non-designated and designated non-fee boat-in campsites within the Deschutes River Scenic Waterway shall be occupied on a first come first serve basis. Campsites may not be reserved or held for later occupation. One person may occupy and thereby hold only one campsite. Placing group or personal property in a campsite not occupied by at least one person, for the purpose of holding or reserving the site for later occupation is prohibited

(e) Campfires, Fuel, Firepans, Smoking:

(A) Open fires and charcoal are prohibited from June 1 to October 15. The Oregon Department of Forestry may extend periods of fire closure if conditions warrant. Plan at page 77. When not prohibited, fire shall be contained in a firepan or similar device of metal. A firepan is a metal container with sides at least two inches high to prevent ashes or burning material from spilling onto the ground.

(B) Commercially manufactured metal camp stoves and lanterns are permissible for outdoor use only when fueled with bottled liquefied petroleum gas (e.g., propane) or liquid gas. Such stoves or lanterns shall be operated in a responsible manner at all times.

(C) Burning of any living, dead or down vegetation within the Lower Deschutes River Management Plan area shall be prohibited. Plan at page 77.

(D) Every overnight camp, overnight hiking party or person using fire or operating a motor driven vehicle or boat within the Deschutes River Scenic Waterway designated by ORS 390.826, shall carry and keep rea-

sonably accessible one bucket of at least one gallon capacity and one spade or shovel.

(E) No person shall leave a fire unattended.

(F) All fires shall be completely extinguished after use. The extinguished remains shall be taken out of the scenic waterway for disposal or deposited in a proper garbage receptacle provided at recreation sites or litter collection stations.

(G) Smoking shall be limited to buildings, closed vehicles, boats on the water or while standing in the water. Plan at page 77.

(f) Firearms: The discharge of firearms is prohibited within the Lower Deschutes River planning area boundaries from the third Saturday in May through August 31 of each year. Plan at page 77.

(g) Water cannons: The use of motorized/mechanized water cannons is prohibited. No person shall use manual water cannons, hydro sticks, water balloons/water balloon launchers, or other water projectile device in any way that creates a hazardous or physically offensive condition or that causes personal or public alarm, nuisance, jeopardy, or violence. Plan at page 59.

(h) Litter and Personal Sanitation:

(A) Persons using the Deschutes River Scenic Waterway for recreational purposes shall place refuse, scrap, trash and garbage in proper receptacles provided for that purpose at maintained recreation sites or litter collection stations. No such refuse, litter, garbage or similar materials shall be buried, abandoned or burned and buried or abandoned. When no approved receptacle or container is available, the material shall be taken out of the scenic waterway area for disposal. Plan at page 62.

(B) All persons using the Deschutes River Scenic Waterway for recreational purposes shall use the developed toilet facilities provided at public recreation sites. An approved portable toilet shall be carried and used by overnight boating groups (1 to 16 persons in segments 1, 3 and 4; 1 to 24 persons in segment 2) that remain, intend to remain, or display intent to remain overnight within the Deschutes River Scenic Waterway, except that this requirement shall not apply to overnight kayak trips that are entirely self-contained and not supported by other craft carrying gear. While present within the Deschutes River Scenic Waterway on an overnight boating basis, all persons shall, whenever practical, use either an approved portable toilet or an agency provided toilet facility for all solid human waste. All persons who remain, intend to remain, or display intent to remain overnight in an undeveloped camp site shall set up an approved portable toilet, ready for use, as soon as practical upon landing at the camping site to be occupied. No person shall leave, deposit, or scatter human waste, toilet paper, or items used as toilet paper, on the ground within the Deschutes River Scenic Waterway. While within the Deschutes River Scenic Waterway, portable toilets shall only be dumped at facilities developed and identified especially for that purpose. Plan at page 62. Where toilets are not provided, and the situation makes it impractical to use a portable toilet, persons shall bury all human waste and toilet paper, or material used as toilet paper, at least six inches below the surface of the ground in natural soil and at least 50 feet from the edge of the river or any other water source. For purposes of this paragraph, the following definitions shall apply:

(i) "Approved portable toilet" is any non-biodegradable, rigid, durable, container designed to receive and hold human waste, in any container position, without leaking, and equipped with a dumping system that allows the container to be emptied and rinsed into a standard receiving or dump system designed for that purpose, such as a SCAT machine or recreational vehicle dump station, in a sanitary manner, without spills, seepage or human exposure to human waste.

(ii) "Remain overnight" means human presence in the Deschutes River Scenic Waterway on a boat-in basis for any period of time from one hour after legal sunset to one hour before legal sunrise.

(iii) "Display intent to remain overnight" while within the Deschutes River Scenic Waterway on a boat-in basis includes, but is not limited to, any off-loading onto the river bank, or preparing for use, common overnight camping equipment such as tents, sleeping bags or bedding, food, cooking or dining equipment, or lighting equipment, or to prepare common camping equipment for use in or on any boat.

(iv) "Developed camp site" means a motor vehicle accessible, fee site.

(i) No person shall use fireworks within the Deschutes River Scenic Waterway: Defined as any combustible or explosive composition or substance or any combination of any such compositions or substances or any other article which was prepared for the purpose of providing a visible or audible effect by combustion, explosion, deflagration or detonation, and includes blank cartridges or toy cannons in which explosives are used, balloons which require fire underneath to propel the same, firecrackers, torpe-

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does, skyrockets, roman candles, bombs, rockets, wheels, colored fires, fountains, mines, serpents, or any other article of like construction or any article containing any explosive or inflammable compound or any tablets or other device containing any explosive substance or inflammable compound.

(j) Vehicle restrictions: The limitations set forth in paragraphs (A) through (B) of this subsection shall apply to all vehicles, operators and passengers on the following roads within the Deschutes River Scenic Waterway: Mecca Flat Road; Trout Creek Road; BLM Upper River Access Road-Maupin to Locked Gate; BLM Middle River Access Road-Bakeoven Road to Highway 216; and BLM Lower River Access Road-Highway 216 to Macks Canyon.

(A) No person shall operate a vehicle with a seating capacity greater than 24 passengers (each seat to hold no more than two persons) plus one driver and/or a total vehicle length greater than 28 feet. Plan at page 71.

(B) No person shall ride or allow another person to ride in or on top of a boat or boats within or on the back of any open bed motor vehicle, or on a boat or boats loaded on the top of any other motor vehicle. A person or persons may ride within a single boat that is properly secured by ropes or straps within the bed rails of a pickup truck, or properly secured as above on the bed of a flat bed motor vehicle. No person will be allowed to ride on the exterior portion of any motor vehicle within the Deschutes River Scenic Waterway.

(k) Inner tubes, float tubes, boogie boards:

(A) Swimming or floating with or without a floatation device and/or the use of inner tubes, float tubes, boogie boards, surf boards and other similar water toys used for transport of persons or property is prohibited in the Deschutes River channel in Moody Rapids on those days when power boats are allowed, except as provided below. This prohibition is in effect from the upstream end of Moody Rapids down river to the downstream side of the Moody Rapids channel marker from legal sunrise to legal sunset when power boats are allowed under the regulations of the Oregon State Marine Board. Anglers using float tubes may cross the Moody Rapids channel during these times provided they do so in the most direct route possible. Float tube anglers crossing the Moody Rapids channel shall look out for and give right-of-way to any motorized boat, which is in Moody Rapids channel or about to enter the rapids from downstream or upstream, or in any event when motorboats are approaching close enough to create a hazard.

(B) It is unlawful to secure any person(s), inner tube, float tube, boogie board, surf board or other similar water toys used for transport of persons or property, in or on the waters of the Deschutes River, to the river bank or to any tree, fixed object or anchoring device on lands adjacent to the river bank or to any such object or device within the boundaries of the river and river banks of the Deschutes River by any cable, rope, line, bungee cord, or other means except to secure boats to the river bank as a normal and recognized necessity. No person shall hold on to any such line or to any device secured to such line in order to ride or be transported into any channel of the Deschutes River.

(C) It is unlawful to secure any cable, rope, line or bungee cord or any device across the river except as necessary for rescue and/or salvage operations and other necessary uses upon consent of the managing agencies of the Confederated Tribes of Warm Springs, Oregon Parks and Recreation Department, Bureau of Land Management and Oregon State Police.

(D) The cables presently in place across the Deschutes River at Dant and the upstream area (approximately river mile 52) of the City of Maupin are exempt from this rule. Any permanent device, as described in this paragraph, will require approval from the Scenic Waterways Program of the Oregon Parks and Recreation Department in accordance with ORS 390.845 and OAR 736-040-0030 and 736-040-0035.

(E) The rules set forth in this rule shall not be applicable to the Deschutes River State Recreation Area Campground, the use of which shall instead be governed by general park area rules and the authority and discretion of the park manager.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.934(2) & 390.938(3)

Hist.: HC 1285, f. 6-27-72; PR 3-1982, f. & ef. 3-26-82; PR 4-1983, f. & ef. 3-30-83; PR 3-1985, f. & ef. 6-4-85; PR 5-1985(Temp), f. 7-15-85, ef. 11-1-85; Suspended by PR 6-1985(Temp), f. & ef. 10-1-85; PR 9-1986, f. & ef. 6-12-86; PR 5-1990, f. & cert. ef. 12-18-90; PR 4-1994, f. & cert. ef. 4-22-94; PRD 2-1998, f. & cert. ef. 1-28-98; PRD 5-1999, f. 5-14-99, cert. ef. 6-1-99; PRD 6-2002, f. 5-15-02, cert. ef. 6-1-02; PRD 8-2003f, 7 cert. ef. 10-3-03; PRD 5-2004, f. 4-27-04, cert. ef. 4-30-04; PRD 6-2008, f. & cert. ef. 5-15-08; PRD 2-2014, f. & cert. ef. 7-1-14

## Public Utility Commission Chapter 860

**Rule Caption:** In the Matter of Amendments to Rules Regarding Adjustment of Utility Bills.

**Adm. Order No.:** PUC 5-2014

**Filed with Sec. of State:** 6-26-2014

**Certified to be Effective:** 6-26-14

**Notice Publication Date:** 3-1-2014

**Rules Amended:** 860-021-0135, 860-034-0130, 860-036-0135, 860-037-0120

**Subject:** The changes implement section 2 of 2013 SB 237, codified in ORS 757.077, aligning rules for energy and water utilities with the statutory limits on collection of incorrect billings, provide exceptions for instances of customer actions of misrepresentation, tampering with devices, diversion of service or product, providing false information or theft. The changes also clarify billing adjustment rules for the telecommunications industry.

**Rules Coordinator:** Diane Davis—(503) 378-4372

### 860-021-0135

#### Adjustment of Utility Bills

(1) Except as provided in section (7) of this rule, when a large telecommunications utility has incorrectly billed a customer, the large telecommunications utility must take corrective action as follows:

(a) If the date of the error can be determined, the large telecommunications utility must issue a bill credit or refund for the over charge or a corrected bill for the under charge back to such date. If the date of the error cannot be determined, the large telecommunications utility must refund the over charge or rebill the under charge for no more than six months' usage.

(b) In no event may a large telecommunications utility issue a corrected bill or refund for more than three years of incorrectly billed charges.

(2) Except as provided in sections (6) and (7) of this rule, if an energy utility determines that a current or former customer of the energy utility was under-billed or over-billed for a service provided by the energy utility under rate schedules or tariffs in effect when the service was provided:

(a) The energy utility must issue a bill to collect amounts previously under-billed during the 12-month period ending on the date on which the customer or former customer was last under-billed. The energy utility may not bill for services provided more than two years before the date the energy utility discovered the under-billing.

(b) The energy utility must issue a refund or bill credit for amounts previously over-billed during the 12-month period ending on the date on which the customer or former customer was last over-billed. The energy utility is not required to issue a refund or bill credit for amounts over-billed more than three years before the date the energy utility discovered the over-billing.

(3) Notwithstanding subsections (1)(a) and (2)(a) of this rule, if the under-billing was the result of fraud, tampering, diversion, theft, misinformation, false identification, or other unlawful conduct on the part of the customer or former customer of the energy or large telecommunications utility, the utility may collect full payment for any amount owed without limitation.

(4) When a utility issues a bill to collect under-billed amounts, a current or former customer of an energy utility, or current customer of a telecommunications utility, may enter into a time-payment agreement as provided in OAR 860-021-0415. If the utility customer is already on a time-payment plan, the utility must offer to renegotiate the payment plan to include the under-billing error. If the customer and utility cannot agree upon payment terms, the Commission will establish terms and conditions to govern the customers' obligation. This section does not apply if the corrected billing is the result of the conditions listed in section (3) of this rule.

(5) When an energy or large telecommunications utility requires payment for amounts previously under-billed, the utility must provide a written notice that explains:

(a) The circumstance and time period of the under-billing;

(b) The corrected bill amount and the amount of the necessary adjustment,

(c) The Commission's consumer complaint process; and

(d) The right of current or former customers of an energy utility or current customers of a telecommunications utility to enter into a time-payment agreement with the utility.

(6) A billing adjustment is not required if an electric or gas meter registers less than a two percent error under conditions of normal operation.

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(7) The energy or large telecommunications utility may waive rebilling or issuing a refund check when costs make such action uneconomical.

Stat. Auth.: ORS 183, 756, 757 & 759  
Stats. Implemented: ORS 756.040, 757.077 & ORS 757.250  
Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 5-1983, f. 5-31-83, ef. 6-1-83 (Order No. 83-284); Renumbered from 860-021-0030; PUC 16-1990, f. 9-28-90, cert. ef. 10-1-90 (Order No. 90-1105); PUC 13-1997, f. & cert. ef. 11-12-97; PUC 11-1998, f. & cert. ef. 5-7-98; PUC 4-1999, f. & cert. ef. 8-12-99; PUC 16-2001, f. & cert. ef. 6-21-01; PUC 5-2014, f. & cert. ef. 6-26-14

## 860-034-0130

### Adjustment of Utility Bills

(1) When a small telecommunications utility has incorrectly billed a retail customer, the utility must take corrective action as follows:

(a) If the date of the error can be determined, the small telecommunications utility must issue a bill credit or refund for the over-charge or a corrected bill for the under-charge back to such date. If the date of the error cannot be determined, the small telecommunications utility must issue a refund or bill credit for the over-charge or rebill the under-charge for no more than six months' usage.

(b) In no event may a small telecommunications utility issue a corrected bill or refund for more than three years of incorrectly billed charges.

(2) When a small telecommunications utility issues a bill to collect under-billed amounts, a customer may enter into a time-payment agreement as provided in OAR 860-034-0276. If the utility customer is already on a time-payment plan, the utility must offer to renegotiate the payment plan to include the under-billing error. If the customer and utility cannot agree upon payment terms, the Commission will establish terms and conditions to govern the customers' obligation.

(3) When a small telecommunications utility requires payment for amounts previously under-billed, the utility must provide a written notice that explains:

(a) The circumstance and time period of the under-billing;  
(b) The corrected bill amount and the amount of the necessary adjustment,

(c) The Commission's consumer complaint process; and

(d) The right for a customer to enter into a time-payment agreement with the utility.

(4) The small telecommunications utility may waive rebilling or issuing a refund check when costs make such action uneconomical.

Stat. Auth.: ORS 183, 756 & 759  
Stats. Implemented: ORS 759.045  
Hist.: PUC 6-1993, f. & cert. ef. 2-19-93 (Order No. 93-185); PUC 12-1998, f. & cert. ef. 5-7-98; PUC 4-1999, f. & cert. ef. 8-12-99; PUC 15-2001, f. & cert. ef. 6-21-01; PUC 5-2014, f. & cert. ef. 6-26-14

## 860-036-0135

### Adjustment of Bills

(1) Except as provided in sections (4) and (5) of this rule, if a water utility determines that a current or former customer of the water utility was under-billed or over-billed for a service provided by the water utility under rate schedules or tariffs in effect when the service was provided:

(a) The water utility must issue a bill to collect amounts previously under-billed during the 12-month period ending on the date on which the customer or former customer was last under-billed. The water utility may not bill for services provided more than two years before the date the utility discovered the under-billing.

(b) The water utility must issue a refund or bill credit for amounts previously over-billed during the 12-month period ending on the date on which the customer or former customer was last over-billed. The water utility is not required to issue a refund or bill credit for amounts over-billed more than three years before the date the utility discovered the over-billing.

(c) Notwithstanding subsection (1)(a) of this rule, if the under-billing was the result of fraud, tampering, diversion, theft, misinformation, false identification, or other unlawful conduct on the part of the customer or former customer of the water utility, the water utility may collect full payment for any amount owed without limitation.

(2) When a water utility issues a bill to collect under-billed amounts, a current or former customer of a water utility may enter into a time-payment agreement as provided in OAR 860-036-0125. If the utility customer is already on a time-payment plan, the water utility must offer to renegotiate the payment plan to include the under-billing error. If the customer and water utility cannot agree upon payment terms, the Commission will establish terms and conditions to govern the customers' obligation. This section does not apply if the corrected billing is the result of the conditions listed in subsection (1)(c) of this rule.

(3) When a water utility requires payment for amounts previously under-billed, the utility must provide a written notice that explains:

(a) The circumstance and time period of the under-billing;  
(b) The corrected bill amount and the amount of the necessary adjustment,

(c) The Commission's consumer complaint process; and  
(d) The right for a current or former customer to enter into a time-payment agreement with the utility.

(4) A billing adjustment is not required if a water meter registers less than a two percent error under conditions of normal operation.

(5) The water utility may waive rebilling or issuing a refund check when the costs make such action uneconomical.

Stat. Auth.: ORS 183, 756 & 757  
Stats. Implemented: ORS 756.040, 757.077 & 757.250  
Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 15-1998, f. & cert. ef. 8-27-98; PUC 9-1999(Temp), f. 10-22-99, cert. ef. 10-23-99 thru 4-19-00; PUC 6-2000, f. 4-18-00, cert. ef. 4-20-00; PUC 5-2014, f. & cert. ef. 6-26-14

## 860-037-0120

### Adjustment of Bills

(1) Except as provided in sections (4) and (5) of this rule, if a wastewater utility determines that a current or former customer of the utility was under-billed or over-billed for a service provided by the wastewater utility under rate schedules or tariffs in effect when the service was provided:

(a) The wastewater utility must issue a bill to collect amounts previously under-billed during the 12-month period ending on the date on which the customer or former customer was last under-billed. The wastewater utility may not bill for services provided more than two years before the date the utility discovered the under-billing.

(b) The wastewater utility must issue a refund or bill credit for amounts previously over-billed during the 12-month period ending on the date on which the customer or former customer was last over-billed. The wastewater utility is not required to refund amounts which were received more than three years before the date the wastewater utility discovered the over-billing.

(c) Notwithstanding subsection (1)(a) of this rule, if the under-billing was the result of fraud, tampering, diversion, theft, misinformation, false identification, or other unlawful conduct on the part of the customer or former customer of the wastewater utility, the wastewater utility may collect full payment for any amount owed without limitation.

(2) When a wastewater utility issues a bill to collect under-billed amounts, a current or former customer of a wastewater utility may enter into a time-payment agreement as provided in OAR 860-037-0110. If the wastewater utility customer is already on a time-payment plan, the utility must offer to renegotiate the payment plan to include the under-billing error. If the customer and wastewater utility cannot agree upon payment terms, the Commission will establish terms and conditions to govern the customers' obligation. This section does not apply if the corrected billing is the result of the conditions listed in subsection (1)(c).

(3) When a wastewater utility requires payment for amounts previously under-billed, the utility must provide a written notice that explains:

(a) The circumstance and time period of the under-billing;  
(b) The corrected bill amount and the amount of the necessary adjustment,

(c) The Commission's consumer complaint process; and  
(d) The right for a current or former customer to enter into a time-payment agreement with the wastewater utility.

(4) A billing adjustment is not required if a wastewater meter registers less than a two percent error under conditions of normal operation.

(5) The wastewater utility may waive rebilling or issuing a refund check when the costs make such action uneconomical.

Stat. Auth.: ORS 183, 756 & 757  
Stats. Implemented: ORS 756.040, 757.005, 757.061, 757.077 & 757.250  
Hist.: PUC 9-1999(Temp), f. 10-22-99, cert. ef. 10-23-99 thru 4-19-00; PUC 6-2000, f. 4-18-00, cert. ef. 4-20-00; PUC 5-2004, f. & cert. ef. 1-29-04; PUC 5-2014, f. & cert. ef. 6-26-14

## Racing Commission Chapter 462

**Rule Caption:** Change the race meet license application due date and modify OHBPA agreement time frame.

**Adm. Order No.:** RC 2-2014(Temp)

**Filed with Sec. of State:** 6-30-2014

**Certified to be Effective:** 6-30-14 thru 12-26-14

**Notice Publication Date:**

**Rules Amended:** 462-120-0050

# ADMINISTRATIVE RULES

**Subject:** Amend: OAR 462-120-0050(1) Amends rule to change the race meet license due date.

Amend: OAR 462-120-0050(E) Modifies the time frame for filing an agreement between OHBPA and race meet license applicant.

**Rules Coordinator:** Karen Parkman—(971) 673-0208

## 462-120-0050

### License Application Procedures; Requirements for Corporations and Partnerships; Stable/Assumed Name

(1) License applications shall be made on forms furnished by the commission. An application is not complete until the application form has been filled out completely and signed by the applicant, the proper fee has been paid, and the applicant has submitted all documentation and information reasonably requested by the board of stewards or the commission. An oral interview may be required in a particular case. All licensees are required to maintain current information regarding themselves on file with the Oregon Racing Commission, including but not limited to their current address, telephone number and any information regarding rulings, arrests or convictions. The commission will send all forms of written communications, including notices, to the address the licensee has on file with the commission. Every person making application for a license to hold a race meet shall file the application with the Oregon Racing Commission in accordance with ORS 462.050. All applications should include:

(a) The applicant's legal name;

(A) If the applicant is a corporation, the names, addresses, dates of birth of its shareholders, directors and officers; if a shareholder is a corporation the date of incorporation, the place of incorporation and the names, addresses, and dates of birth of its designated representative, directors and officers must be provided; and

(B) If the applicant is a partnership the names, addresses, dates of birth of the partners; if a partner is a corporation the date of incorporation, the place of incorporation and the names, addresses, and dates of birth of its designated representative must be provided.

(C) If the shareholder of a corporate licensee, or a partner of a partnership licensee, is a corporation, the designated representative of that corporation shall provide to the commission the names, addresses and birth dates of that corporation's shareholders promptly upon request by the stewards or the executive director of the commission.

(b) The names of the race tracks the applicant, or its agent, has contracts with that allow the applicant to provide the simulcast signals and pari-mutuel wagering on the product at the time the application is made;

(c) Financial information from the applicant that demonstrates whether the applicant has the financial resources to operate the race meet;

(d) A detailed budget showing anticipated revenue, expenditures and cash flows by month, from the race meet's operation during the license period;

(e) The number of days that the applicant is planning to offer live racing during the fiscal year in which they are seeking to be licensed;

(f) A list of all race meet personnel containing the name, position and job location;

(g) A chart illustrating the organizational structure, including reporting lines;

(h) A list of all host contracts for exporting of signal on file at the time of application;

(i) A check representing \$100 per racing day payable to the Oregon Racing Commission;

(j) Documentation supporting current Public liability insurance;

(k) Documentation supporting current Jockey Insurance;

(l) Documentation supporting a current Bond that shows the Oregon Racing Commission as beneficiary equal to the amount of all moneys that escheat under 462.110(2);

(m) Documentation that the applicant and/or parent company are registered to do business in the state of Oregon;

(n) As part of the application for licensure as a race meet, the applicant shall submit a detailed plan of operations in a format and containing such information as required by the commission. At a minimum, the operating plan shall address the following issues:

(A) The manner in which the proposed simulcasting and wagering system will operate;

(B) The take-out rates for wagering during the licensing period;

(C) Programs for responsible wagering;

(D) Physical security controls for the Tote Room;

(E) An agreement or a statement of when the commercial race meet applicant anticipates entering into such an agreement between the Oregon Horsemen's Benevolent Protective Association (OHBPA) and the state

commercial race meet licensee as defined in ORS 462.062 with such agreement due no later than thirty (30) days after the application has been submitted;

(F) A complete listing of all names, operators and addresses of Off-track Betting (OTB) locations; and

(G) Narrative acknowledging tax liabilities as set forth in Chapter 462.

(2) The application must show the true name of the applicant, and must also disclose any other name used by the applicant during the past 10 years. An application for an owner's license must identify the true names of all other persons who have any ownership interest, leasehold interest, or other investment in any of the applicant's racing animal(s) which will be racing in Oregon. All applicants should be aware that Oregon law prohibits any person from conducting business in Oregon under an assumed name or under any name other than the real and true name of each person conducting the business or having an interest therein, unless the assumed name is registered with the Office of the Secretary of State. Refer to ORS 648.010(1).

(3) Licensing fees. The application fee for licensure or for the renewal of licensure shall be \$20 per year for the first category, with a sum not to exceed an additional \$10 per year for any and all additional categories. In no case shall the total fees paid exceed \$30 per year, regardless of the number of categories held. The period of licensure shall be three years in duration, with any subsequent additional licenses to expire on the same date as the original license. The fees that accompany license applications are non-refundable.

(4) Dual licenses may be denied if, in the opinion of the stewards or commission, there is a conflict of interest in holding more than one license.

(a) When an applicant applies for a license in more than one occupation, the stewards or the commission shall consider whether the holding of such multiple licensing creates a conflict of interest (such as, but not limited to, a sudden change in ownership to immediate family members or a change in ownership without adequate consideration). If such appearance is created, the multiple license may be denied.

(b) The following dual licenses shall be prohibited:

(A) A person licensed as a jockey shall not be licensed in any other capacity unless approved by the board of stewards.

(B) A person licensed as an owner shall not be licensed as a jockey agent or racing official.

(C) A person licensed as a race track owner or operator or as a racing official shall not be licensed in another capacity during the race meeting which the person owns or operates or at which that person is serving as a racing official unless approved by the board of stewards or as provided in OAR 462-140-0050(6).

(D) Any veterinarian licensed by the Oregon Racing Commission to practice veterinary medicine on a racecourse shall be prohibited from concurrently holding any other license at any location under the jurisdiction of the commission unless otherwise approved by the board of stewards.

(c) A holder of a groom's license may be a hot walker. A trainer or an assistant trainer may also perform the duties of a groom or hot walker. An owner may also groom or hot walk only the horse(s) he/she owns. However, except for those license categories specifically mentioned herein, no licensee shall act in any capacity other than that for which he/she is licensed. Thus, for example:

(A) A pony person may not exercise horses if not licensed as an exercise rider.

(B) A groom may not perform the duties of a trainer if not licensed as a trainer.

(C) A trainer may not pony or exercise a horse if not licensed as a pony person or an exercise person. (D) An outrider may not perform duties of a pony person except as needed in the performance of their duties as an outrider.

(5) All corporations, limited partnerships, partnerships and other entities (except natural persons) which apply for licenses shall attach to the application as applicable:

(a) A document, signed by the president and secretary of the corporation, listing the true name and address of all officers, directors, shareholders, general partners, limited partners, and other persons having a legal or beneficial interest in the horse, stable or other business sought to be licensed, and identifying the nature and amount of each person's interest; and

(b) For corporations, a copy of the certificate of incorporation, an affidavit signed by the president indicating whether any officer, director, or stockholder has been ruled off, denied a license, or is under suspension by any official body of any racing jurisdiction, and a written agreement to noti-

## ADMINISTRATIVE RULES

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fy the commission within 30 days after there has been a change in any officer, director, or stockholder; or

(c) For partnerships, a copy of the written partnership agreement, an affidavit signed by a general partner indicating whether any partner has been ruled off, denied a license, or is under suspension by any official body of any racing jurisdiction, and a written agreement to notify the commission within 30 days after there has been a change in any partner. Persons who do not have a written partnership agreement may not be licensed under the partnership name; instead, each person must be individually licensed under his/her own name; and

(d) For claiming purposes, all corporations must have an authorized agent, who may be a corporate officer, and all partnerships and licensed stables must either designate an authorized agent to sign claim forms (who may be one of the partners) or else all partners must sign the claim form.

(6) All licensees, in accepting a license, or any person introducing an animal onto the confines of any racecourse, or licensed training track, are considered to have granted permission to Oregon Racing Commission veterinarians, investigators, and members of the board of stewards, to enter upon those premises for the purpose of inspection to determine if those premises are suitable for the housing of animals, and to determine the health, safety and physical conditions of any animals contained therein.

Stat. Auth.: ORS 462.270(3)

Stats. Implemented: ORS 462.020

Hist.: RC 3-2000, f. 3-27-00, cert. ef. 5-1-00; RC 2-2001, f. 3-19-01, cert. ef. 4-1-01; RC 5-2002, f. 12-6-02, cert. ef. 1-1-03; RC 2-2008, f. & cert. ef. 9-30-08; RC 2-2009, f. 8-24-09, cert. ef. 10-1-09; RC 1-2010, f. 9-23-10, cert. ef. 10-1-10; RC 2-2012, f. 5-29-12, cert. ef. 6-1-12; RC 2-2014(Temp), f. & cert. ef. 6-30-14 thru 12-26-14

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123-630-0030	4-1-2014	Amend	5-1-2014	137-003-0505	2-1-2014	Amend(T)	3-1-2014
123-630-0030(T)	4-1-2014	Repeal	5-1-2014	137-003-0505	4-1-2014	Amend	5-1-2014
123-630-0040	4-1-2014	Amend	5-1-2014	137-003-0505(T)	4-1-2014	Repeal	5-1-2014
123-630-0040(T)	4-1-2014	Repeal	5-1-2014	137-003-0640	2-1-2014	Amend(T)	3-1-2014
123-630-0050	4-1-2014	Amend	5-1-2014	137-003-0640	4-1-2014	Amend	5-1-2014
123-630-0050(T)	4-1-2014	Repeal	5-1-2014	137-003-0640(T)	4-1-2014	Repeal	5-1-2014
123-630-0060	4-1-2014	Amend	5-1-2014	137-045-0050	7-11-2014	Amend(T)	8-1-2014
123-630-0060(T)	4-1-2014	Repeal	5-1-2014	137-046-0130	7-1-2014	Amend(T)	8-1-2014
123-630-0070	4-1-2014	Amend	5-1-2014	137-047-0260	7-1-2014	Amend(T)	8-1-2014

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137-047-0265	7-1-2014	Amend(T)	8-1-2014	137-110-0520	1-31-2014	Repeal	3-1-2014
137-047-0270	7-1-2014	Amend(T)	8-1-2014	137-110-0600	1-31-2014	Amend	3-1-2014
137-047-0300	7-1-2014	Amend(T)	8-1-2014	137-110-0605	1-31-2014	Adopt	3-1-2014
137-047-0450	7-1-2014	Amend(T)	8-1-2014	137-110-0610	1-31-2014	Amend	3-1-2014
137-047-0560	7-1-2014	Amend(T)	8-1-2014	137-110-0620	1-31-2014	Amend	3-1-2014
137-048-0130	7-1-2014	Amend(T)	8-1-2014	137-110-0630	1-31-2014	Amend	3-1-2014
137-048-0210	7-1-2014	Amend(T)	8-1-2014	137-110-0640	1-31-2014	Amend	3-1-2014
137-048-0220	7-1-2014	Amend(T)	8-1-2014	137-110-0650	1-31-2014	Amend	3-1-2014
137-049-0100	7-1-2014	Amend(T)	8-1-2014	137-110-0660	1-31-2014	Repeal	3-1-2014
137-049-0120	7-1-2014	Amend(T)	8-1-2014	137-110-0670	1-31-2014	Amend	3-1-2014
137-049-0130	7-1-2014	Amend(T)	8-1-2014	137-110-0675	1-31-2014	Adopt	3-1-2014
137-049-0380	7-1-2014	Amend(T)	8-1-2014	137-120-0010	1-31-2014	Repeal	3-1-2014
137-049-0600	7-1-2014	Amend(T)	8-1-2014	137-120-0020	1-31-2014	Amend	3-1-2014
137-049-0610	7-1-2014	Amend(T)	8-1-2014	141-030-0015	2-1-2014	Amend	2-1-2014
137-049-0620	7-1-2014	Amend(T)	8-1-2014	141-030-0025	2-1-2014	Amend	2-1-2014
137-049-0630	7-1-2014	Amend(T)	8-1-2014	141-030-0036	2-1-2014	Repeal	2-1-2014
137-049-0640	7-1-2014	Amend(T)	8-1-2014	141-030-0037	2-1-2014	Amend	2-1-2014
137-049-0650	7-1-2014	Amend(T)	8-1-2014	141-035-0012	2-1-2014	Amend	2-1-2014
137-049-0660	7-1-2014	Amend(T)	8-1-2014	141-035-0013	2-1-2014	Amend	2-1-2014
137-049-0690	7-1-2014	Amend(T)	8-1-2014	141-035-0015	2-1-2014	Repeal	2-1-2014
137-049-0820	7-1-2014	Amend(T)	8-1-2014	141-035-0016	2-1-2014	Amend	2-1-2014
137-050-0710	5-22-2014	Amend	7-1-2014	141-035-0018	2-1-2014	Amend	2-1-2014
137-050-0735	5-22-2014	Amend	7-1-2014	141-035-0020	2-1-2014	Amend	2-1-2014
137-050-0740	5-22-2014	Amend	7-1-2014	141-035-0025	2-1-2014	Amend	2-1-2014
137-050-0745	5-22-2014	Amend	7-1-2014	141-035-0030	2-1-2014	Amend	2-1-2014
137-050-0755	5-22-2014	Amend	7-1-2014	141-035-0035	2-1-2014	Amend	2-1-2014
137-055-1100	4-1-2014	Amend	5-1-2014	141-035-0040	2-1-2014	Amend	2-1-2014
137-055-2045	5-22-2014	Amend	7-1-2014	141-035-0045	2-1-2014	Amend	2-1-2014
137-055-2170	1-13-2014	Amend(T)	2-1-2014	141-035-0047	2-1-2014	Amend	2-1-2014
137-055-2170	5-22-2014	Amend	7-1-2014	141-035-0048	2-1-2014	Amend	2-1-2014
137-055-2170(T)	5-22-2014	Repeal	7-1-2014	141-035-0050	2-1-2014	Amend	2-1-2014
137-055-3300	4-1-2014	Amend	5-1-2014	141-035-0065	2-1-2014	Amend	2-1-2014
137-055-3360	4-1-2014	Amend	5-1-2014	141-035-0068	2-1-2014	Amend	2-1-2014
137-055-3420	1-13-2014	Amend(T)	2-1-2014	141-040-0020	2-1-2014	Amend	2-1-2014
137-055-3420	5-22-2014	Amend	7-1-2014	141-040-0214	2-1-2014	Amend	2-1-2014
137-055-3420(T)	5-22-2014	Repeal	7-1-2014	141-045-0010	2-1-2014	Amend	2-1-2014
137-055-3435	4-1-2014	Amend	5-1-2014	141-045-0031	2-1-2014	Amend	2-1-2014
137-055-3660	4-1-2014	Amend	5-1-2014	141-045-0041	2-1-2014	Amend	2-1-2014
137-055-5510	4-1-2014	Amend	5-1-2014	141-045-0041	2-1-2014	Amend	2-1-2014
137-055-6024	5-22-2014	Amend	7-1-2014	141-045-0061	2-1-2014	Amend	2-1-2014
137-055-6120	4-1-2014	Amend	5-1-2014	141-045-0100	2-1-2014	Amend	2-1-2014
137-055-7180	4-1-2014	Amend	5-1-2014	141-089-0640	1-1-2014	Amend	1-1-2014
137-084-0500	4-1-2014	Amend	5-1-2014	141-089-0645	1-1-2014	Amend	1-1-2014
137-110-0001	1-31-2014	Repeal	3-1-2014	141-089-0820	1-1-2014	Amend	1-1-2014
137-110-0005	1-31-2014	Repeal	3-1-2014	141-089-0825	1-1-2014	Amend	1-1-2014
137-110-0010	1-31-2014	Amend	3-1-2014	141-089-0830	1-1-2014	Amend	1-1-2014
137-110-0020	1-31-2014	Repeal	3-1-2014	141-089-0835	1-1-2014	Amend	1-1-2014
137-110-0110	1-31-2014	Amend	3-1-2014	141-145-0000	2-1-2014	Adopt	2-1-2014
137-110-0200	1-31-2014	Amend	3-1-2014	141-145-0005	2-1-2014	Adopt	2-1-2014
137-110-0210	1-31-2014	Amend	3-1-2014	141-145-0010	2-1-2014	Adopt	2-1-2014
137-110-0300	1-31-2014	Adopt	3-1-2014	141-145-0015	2-1-2014	Adopt	2-1-2014
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137-110-0420	1-31-2014	Amend	3-1-2014	141-145-0025	2-1-2014	Adopt	2-1-2014
137-110-0430	1-31-2014	Repeal	3-1-2014	141-145-0030	2-1-2014	Adopt	2-1-2014
137-110-0500	1-31-2014	Repeal	3-1-2014	141-145-0035	2-1-2014	Adopt	2-1-2014
137-110-0510	1-31-2014	Repeal	3-1-2014	141-145-0040	2-1-2014	Adopt	2-1-2014
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141-145-0060	2-1-2014	Adopt	2-1-2014	150-316.368	1-1-2014	Amend	2-1-2014
141-145-0065	2-1-2014	Adopt	2-1-2014	150-316.680(1)(c)-(A)	1-1-2014	Repeal	2-1-2014
141-145-0070	2-1-2014	Adopt	2-1-2014	150-316.680(1)(c)-(B)	1-1-2014	Repeal	2-1-2014
141-145-0075	2-1-2014	Adopt	2-1-2014	150-316.693	1-1-2014	Adopt	2-1-2014
141-145-0080	2-1-2014	Adopt	2-1-2014	150-316.789	1-1-2014	Repeal	2-1-2014
141-145-0085	2-1-2014	Adopt	2-1-2014	150-316.791	1-1-2014	Repeal	2-1-2014
141-145-0090	2-1-2014	Adopt	2-1-2014	150-316.792	1-1-2014	Adopt	2-1-2014
150-118.005	12-26-2013	Adopt	2-1-2014	150-317.010(4)	1-1-2014	Amend	2-1-2014
150-118.010	12-26-2013	Adopt	2-1-2014	150-317.067	1-1-2014	Amend	2-1-2014
150-118.010(1)	12-26-2013	Amend	2-1-2014	150-457.440(9)	1-1-2014	Amend	2-1-2014
150-118.010(2)	12-26-2013	Amend	2-1-2014	160-010-0700	1-1-2014	Adopt	2-1-2014
150-118.010(3)	12-26-2013	Amend	2-1-2014	160-010-0700	1-3-2014	Adopt	2-1-2014
150-118.010(4)(b)	12-26-2013	Amend	2-1-2014	160-010-0701	1-1-2014	Adopt	2-1-2014
150-118.010(7)	12-26-2013	Amend	2-1-2014	160-010-0701	1-3-2014	Adopt	2-1-2014
150-118.010(8)	12-26-2013	Adopt	2-1-2014	160-010-0710	1-1-2014	Adopt	2-1-2014
150-118.100(1)	12-26-2013	Amend	2-1-2014	160-010-0710	1-3-2014	Adopt	2-1-2014
150-118.100(6)	12-26-2013	Adopt	2-1-2014	160-010-0720	1-1-2014	Adopt	2-1-2014
150-118.140	12-26-2013	Amend	2-1-2014	160-010-0720	1-3-2014	Adopt	2-1-2014
150-118.160	12-26-2013	Adopt	2-1-2014	160-100-0000	3-6-2014	Amend	4-1-2014
150-118.160-(B)	12-26-2013	Amend	2-1-2014	161-006-0155	1-1-2014	Amend(T)	2-1-2014
150-118.171	12-26-2013	Amend	2-1-2014	161-006-0155	4-22-2014	Amend	6-1-2014
150-118.225	12-26-2013	Amend	2-1-2014	161-006-0155	5-20-2014	Amend	7-1-2014
150-118.250(1)	12-26-2013	Am. & Ren.	2-1-2014	161-006-0160	1-1-2014	Amend(T)	2-1-2014
150-118.260	12-26-2013	Adopt	2-1-2014	161-006-0160	4-22-2014	Amend	6-1-2014
150-118.260(6)	12-26-2013	Amend	2-1-2014	161-006-0160	5-20-2014	Amend	7-1-2014
150-118.265	12-26-2013	Adopt	2-1-2014	161-010-0010	7-7-2014	Amend(T)	8-1-2014
150-118.300	12-26-2013	Amend	2-1-2014	161-010-0025	7-7-2014	Amend(T)	8-1-2014
150-137.300(3)	12-26-2013	Am. & Ren.	2-1-2014	161-010-0035	7-7-2014	Amend(T)	8-1-2014
150-305.145(3)	1-1-2014	Amend	2-1-2014	161-010-0045	7-7-2014	Amend(T)	8-1-2014
150-305.230	1-1-2014	Amend	2-1-2014	161-010-0065	7-7-2014	Amend(T)	8-1-2014
150-305.285	1-1-2014	Amend	2-1-2014	161-010-0085	7-7-2014	Amend(T)	8-1-2014
150-305.655	1-1-2014	Repeal	2-1-2014	161-015-0000	7-7-2014	Amend(T)	8-1-2014
150-305.810	12-26-2013	Amend	2-1-2014	161-025-0060	1-1-2014	Amend(T)	2-1-2014
150-306.135	1-1-2014	Amend	2-1-2014	161-025-0060	4-22-2014	Amend	6-1-2014
150-308.010	1-1-2014	Amend	2-1-2014	161-025-0060	5-20-2014	Amend	7-1-2014
150-308A.724	1-1-2014	Repeal	2-1-2014	161-570-0025	1-1-2014	Amend(T)	2-1-2014
150-309.100(3)-(B)	1-1-2014	Amend	2-1-2014	161-570-0025	4-22-2014	Amend	6-1-2014
150-309.110(1)-(A)	1-1-2014	Amend	2-1-2014	161-570-0025	5-20-2014	Amend	7-1-2014
150-311.223(4)	1-1-2014	Amend	2-1-2014	161-570-0030	1-1-2014	Amend(T)	2-1-2014
150-311.674	1-1-2014	Repeal	2-1-2014	161-570-0030	4-22-2014	Amend	6-1-2014
150-311.689	1-1-2014	Repeal	2-1-2014	161-570-0030	5-20-2014	Amend	7-1-2014
150-314.280(3)	1-1-2014	Amend	2-1-2014	162-010-0000	2-13-2014	Amend	3-1-2014
150-314.380(2)-(B)	1-1-2014	Amend	2-1-2014	162-010-0010	2-13-2014	Amend	3-1-2014
150-314.385(4)	12-26-2013	Amend	2-1-2014	162-010-0020	2-13-2014	Amend	3-1-2014
150-314.410(4)	1-1-2014	Amend	2-1-2014	162-010-0030	2-13-2014	Amend	3-1-2014
150-314.415(7)	12-26-2013	Amend	2-1-2014	162-010-0050	2-13-2014	Amend	3-1-2014
150-314.775	1-1-2014	Amend	2-1-2014	162-010-0115	2-13-2014	Amend	3-1-2014
150-314.778	1-1-2014	Amend	2-1-2014	162-010-0120	2-13-2014	Amend	3-1-2014
150-314.HB2071(B)	12-26-2013	Renumber	2-1-2014	162-010-0130	2-13-2014	Amend	3-1-2014
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150-315.204-(A)	1-1-2014	Amend	2-1-2014	162-010-0160	2-13-2014	Repeal	3-1-2014
150-315.304(9)	1-1-2014	Amend	2-1-2014	162-010-0170	2-13-2014	Repeal	3-1-2014
150-315.514	12-26-2013	Amend	2-1-2014	162-010-0190	2-13-2014	Amend	3-1-2014
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165-001-0050	1-2-2014	Amend	2-1-2014	213-003-0001	2-3-2014	Amend	3-1-2014
165-010-0005	1-2-2014	Amend	2-1-2014	213-008-0002	2-3-2014	Amend	3-1-2014
165-010-0080	1-2-2014	Repeal	2-1-2014	213-017-0004	2-3-2014	Amend	3-1-2014
165-012-0005	1-2-2014	Amend	2-1-2014	213-017-0005	2-3-2014	Amend	3-1-2014
165-012-0240	1-2-2014	Amend	2-1-2014	213-017-0005(T)	2-3-2014	Repeal	3-1-2014
165-013-0010	1-2-2014	Amend	2-1-2014	213-017-0006	2-3-2014	Amend	3-1-2014
165-014-0005	1-2-2014	Amend	2-1-2014	213-017-0006(T)	2-3-2014	Repeal	3-1-2014
165-014-0030	1-7-2014	Amend	2-1-2014	213-017-0008	2-3-2014	Amend	3-1-2014
165-016-0000	3-11-2014	Adopt	4-1-2014	213-017-0008(T)	2-3-2014	Repeal	3-1-2014
165-016-0040	3-11-2014	Repeal	4-1-2014	213-017-0009	2-3-2014	Amend	3-1-2014
165-016-0045	3-11-2014	Repeal	4-1-2014	213-017-0009(T)	2-3-2014	Repeal	3-1-2014
165-016-0050	3-11-2014	Repeal	4-1-2014	213-018-0012	2-3-2014	Adopt	3-1-2014
165-016-0055	3-11-2014	Repeal	4-1-2014	213-018-0012(T)	2-3-2014	Repeal	3-1-2014
165-016-0060	3-11-2014	Repeal	4-1-2014	213-018-0013	2-3-2014	Adopt	3-1-2014
165-016-0070	3-11-2014	Repeal	4-1-2014	213-018-0013(T)	2-3-2014	Repeal	3-1-2014
165-016-0080	3-11-2014	Repeal	4-1-2014	213-018-0036	2-3-2014	Adopt	3-1-2014
165-016-0100	3-11-2014	Repeal	4-1-2014	213-018-0036(T)	2-3-2014	Repeal	3-1-2014
165-016-0105	3-11-2014	Repeal	4-1-2014	213-019-0008	2-3-2014	Amend	3-1-2014
165-016-2014	2-13-2014	Adopt(T)	3-1-2014	213-019-0008(T)	2-3-2014	Repeal	3-1-2014
165-020-0025	1-2-2014	Repeal	2-1-2014	213-019-0010	2-3-2014	Amend	3-1-2014
166-005-0010	2-25-2014	Amend	4-1-2014	213-019-0012	2-3-2014	Amend	3-1-2014
166-150-0005	2-25-2014	Amend	4-1-2014	213-019-0015	2-3-2014	Amend	3-1-2014
166-150-0035	2-25-2014	Amend	4-1-2014	250-001-0000	1-15-2014	Amend	2-1-2014
166-150-0040	2-25-2014	Amend	4-1-2014	250-001-0005	1-15-2014	Amend	2-1-2014
166-150-0095	2-25-2014	Amend	4-1-2014	250-001-0040	1-15-2014	Adopt	2-1-2014
166-150-0135	2-25-2014	Amend	4-1-2014	250-001-0050	1-15-2014	Adopt	2-1-2014
166-150-0210	2-25-2014	Amend	4-1-2014	250-001-0060	1-15-2014	Adopt	2-1-2014
167-001-0007	3-1-2014	Amend	4-1-2014	250-001-0001	1-15-2014	Amend	2-1-2014
167-001-0020	3-1-2014	Amend	4-1-2014	250-015-0002	1-15-2014	Amend	2-1-2014
167-001-0030	3-1-2014	Amend	4-1-2014	250-015-0005	1-15-2014	Amend	2-1-2014
167-001-0040	3-1-2014	Repeal	4-1-2014	250-015-0006	1-15-2014	Amend	2-1-2014
167-001-0050	3-1-2014	Repeal	4-1-2014	250-015-0008	1-15-2014	Amend	2-1-2014
167-001-0060	3-1-2014	Repeal	4-1-2014	250-015-0010	1-15-2014	Amend	2-1-2014
167-001-0065	3-1-2014	Repeal	4-1-2014	250-015-0011	1-15-2014	Repeal	2-1-2014
167-001-0070	3-1-2014	Repeal	4-1-2014	250-015-0015	1-15-2014	Repeal	2-1-2014
167-001-0081	3-1-2014	Amend	4-1-2014	250-015-0016	1-15-2014	Repeal	2-1-2014
167-001-0085	3-1-2014	Repeal	4-1-2014	250-015-0017	1-15-2014	Repeal	2-1-2014
167-001-0300	3-1-2014	Amend	4-1-2014	250-015-0019	1-15-2014	Repeal	2-1-2014
167-001-0360	3-1-2014	Amend	4-1-2014	250-015-0020	1-15-2014	Repeal	2-1-2014
167-001-0600	3-1-2014	Amend	4-1-2014	250-015-0021	1-15-2014	Repeal	2-1-2014
167-001-0620	3-1-2014	Amend	4-1-2014	250-015-0022	1-15-2014	Amend	2-1-2014
167-001-0625	3-1-2014	Repeal	4-1-2014	250-015-0023	1-15-2014	Repeal	2-1-2014
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172-005-0045	5-30-2014	Adopt	7-1-2014	250-015-0031	1-15-2014	Repeal	2-1-2014
173-006-0005	12-19-2013	Amend	2-1-2014	250-015-0032	1-15-2014	Repeal	2-1-2014
173-008-0005	12-19-2013	Amend	2-1-2014	250-015-0033	1-15-2014	Repeal	2-1-2014
177-075-0040	12-1-2013	Amend	1-1-2014	250-015-0035	1-15-2014	Adopt	2-1-2014
177-075-0040(T)	12-1-2013	Repeal	1-1-2014	250-016-0080	1-15-2014	Amend	2-1-2014
177-094-0100	4-6-2014	Adopt	5-1-2014	250-016-0090	1-15-2014	Adopt	2-1-2014

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250-019-0010	1-15-2014	Repeal	2-1-2014	259-008-0060	6-24-2014	Amend	8-1-2014
250-019-0020	1-15-2014	Repeal	2-1-2014	259-008-0067	1-29-2014	Amend	3-1-2014
250-019-0030	1-15-2014	Repeal	2-1-2014	259-008-0069	1-2-2014	Amend	2-1-2014
250-019-0040	1-15-2014	Repeal	2-1-2014	259-008-0070	1-2-2014	Amend	2-1-2014
250-019-0050	1-15-2014	Repeal	2-1-2014	259-008-0070	1-28-2014	Amend	3-1-2014
250-019-0060	1-15-2014	Repeal	2-1-2014	259-008-0070	2-27-2014	Amend(T)	4-1-2014
250-019-0070	1-15-2014	Repeal	2-1-2014	259-008-0070	6-24-2014	Amend	8-1-2014
250-019-0080	1-15-2014	Repeal	2-1-2014	259-008-0070(T)	6-24-2014	Repeal	8-1-2014
250-020-0032	1-15-2014	Amend	2-1-2014	259-008-0075	1-2-2014	Amend	2-1-2014
250-020-0033	3-10-2014	Amend(T)	4-1-2014	259-008-0080	1-2-2014	Amend	2-1-2014
250-020-0033(T)	3-13-2014	Suspend	4-1-2014	259-008-0080	1-29-2014	Amend	3-1-2014
250-020-0221	4-11-2014	Amend(T)	5-1-2014	259-008-0090	1-2-2014	Amend	2-1-2014
250-020-0385	1-15-2014	Amend	2-1-2014	259-008-0090	1-29-2014	Amend	3-1-2014
250-026-0005	6-1-2014	Adopt	6-1-2014	259-008-0100	1-2-2014	Amend	2-1-2014
250-026-0010	6-1-2014	Adopt	6-1-2014	259-009-0005	2-6-2014	Amend	3-1-2014
250-026-0015	6-1-2014	Adopt	6-1-2014	259-009-0005	4-3-2014	Amend	5-1-2014
250-026-0020	6-1-2014	Adopt	6-1-2014	259-009-0062	2-6-2014	Amend	3-1-2014
250-026-0025	6-1-2014	Adopt	6-1-2014	259-009-0062	4-3-2014	Amend	5-1-2014
250-026-0030	6-1-2014	Adopt	6-1-2014	259-009-0070	1-28-2014	Amend	3-1-2014
250-026-0035	6-1-2014	Adopt	6-1-2014	259-013-0000	1-2-2014	Amend	2-1-2014
250-026-0040	6-1-2014	Adopt	6-1-2014	259-013-0220	1-2-2014	Amend	2-1-2014
250-026-0045	6-1-2014	Adopt	6-1-2014	259-013-0230	1-2-2014	Amend	2-1-2014
250-026-0050	6-1-2014	Adopt	6-1-2014	259-060-0120	6-24-2014	Amend	8-1-2014
250-026-0055	6-1-2014	Adopt	6-1-2014	259-060-0300	1-2-2014	Amend	2-1-2014
255-030-0010	11-27-2013	Amend	1-1-2014	259-060-0300	1-28-2014	Amend	3-1-2014
255-030-0013	11-27-2013	Amend	1-1-2014	259-060-0300	3-6-2014	Amend(T)	4-1-2014
255-030-0021	11-27-2013	Amend	1-1-2014	259-060-0300	6-24-2014	Amend	8-1-2014
255-030-0023	11-27-2013	Amend	1-1-2014	259-060-0300(T)	6-24-2014	Repeal	8-1-2014
255-030-0024	11-27-2013	Amend	1-1-2014	259-061-0040	5-5-2014	Amend	6-1-2014
255-030-0025	11-27-2013	Amend	1-1-2014	259-061-0300	5-5-2014	Adopt	6-1-2014
255-030-0026	11-27-2013	Amend	1-1-2014	274-015-0010	1-1-2014	Amend	2-1-2014
255-030-0027	11-27-2013	Amend	1-1-2014	274-015-0010(T)	1-1-2014	Repeal	2-1-2014
255-030-0032	11-27-2013	Amend	1-1-2014	291-014-0100	12-13-2013	Amend	1-1-2014
255-030-0035	11-27-2013	Amend	1-1-2014	291-014-0100	1-14-2014	Amend	2-1-2014
255-030-0040	11-27-2013	Amend	1-1-2014	291-014-0110	12-13-2013	Amend	1-1-2014
255-030-0046	11-27-2013	Adopt	1-1-2014	291-014-0110	1-14-2014	Amend	2-1-2014
255-030-0055	11-27-2013	Amend	1-1-2014	291-014-0120	12-13-2013	Amend	1-1-2014
255-060-0012	1-17-2014	Amend(T)	3-1-2014	291-014-0120	1-14-2014	Amend	2-1-2014
255-060-0012	5-15-2014	Amend	6-1-2014	291-016-0020	6-6-2014	Amend(T)	7-1-2014
255-062-0016	11-27-2013	Amend	1-1-2014	291-016-0020	7-2-2014	Amend(T)	8-1-2014
255-075-0079	2-14-2014	Amend(T)	3-1-2014	291-016-0120	6-6-2014	Adopt(T)	7-1-2014
255-075-0079	6-19-2014	Amend	8-1-2014	291-016-0120	7-2-2014	Adopt(T)	8-1-2014
255-075-0079(T)	2-24-2014	Suspend	4-1-2014	291-041-0018	12-13-2013	Adopt(T)	1-1-2014
255-080-0008	3-27-2014	Amend(T)	5-1-2014	291-041-0018	1-17-2014	Adopt(T)	3-1-2014
255-080-0011	3-27-2014	Amend(T)	5-1-2014	291-041-0018	3-4-2014	Adopt	4-1-2014
259-008-0005	1-2-2014	Amend	2-1-2014	291-041-0018(T)	3-4-2014	Repeal	4-1-2014
259-008-0005	1-29-2014	Amend	3-1-2014	291-041-0020	12-13-2013	Amend(T)	1-1-2014
259-008-0010	1-2-2014	Amend	2-1-2014	291-041-0020	1-17-2014	Amend(T)	3-1-2014
259-008-0010	6-24-2014	Amend	8-1-2014	291-041-0020	3-4-2014	Amend	4-1-2014
259-008-0011	6-24-2014	Amend	8-1-2014	291-041-0020(T)	3-4-2014	Repeal	4-1-2014
259-008-0020	1-2-2014	Amend	2-1-2014	291-055-0005	7-1-2014	Amend(T)	8-1-2014
259-008-0020	1-29-2014	Amend	3-1-2014	291-055-0010	7-1-2014	Amend(T)	8-1-2014
259-008-0025	1-2-2014	Amend	2-1-2014	291-055-0014	7-1-2014	Amend(T)	8-1-2014
259-008-0025	1-2-2014	Amend	2-1-2014	291-055-0019	4-22-2014	Amend	6-1-2014
259-008-0025	4-10-2014	Amend	5-1-2014	291-055-0019	7-1-2014	Amend(T)	8-1-2014
259-008-0060	1-2-2014	Amend	2-1-2014	291-055-0020	7-1-2014	Amend(T)	8-1-2014

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291-055-0031	7-1-2014	Amend(T)	8-1-2014	309-011-0070	1-28-2014	Repeal	3-1-2014
291-055-0040	7-1-2014	Amend(T)	8-1-2014	309-011-0075	1-28-2014	Repeal	3-1-2014
291-055-0045	7-1-2014	Amend(T)	8-1-2014	309-011-0080	1-28-2014	Repeal	3-1-2014
291-055-0050	7-1-2014	Amend(T)	8-1-2014	309-011-0085	1-28-2014	Repeal	3-1-2014
291-073-0100	3-3-2014	Adopt	4-1-2014	309-011-0090	1-28-2014	Repeal	3-1-2014
291-073-0110	3-3-2014	Adopt	4-1-2014	309-011-0095	1-28-2014	Repeal	3-1-2014
291-077-0035	12-1-2013	Amend	1-1-2014	309-012-0130	12-20-2013	Amend(T)	2-1-2014
291-077-0035	1-14-2014	Amend	2-1-2014	309-012-0130	6-19-2014	Amend	7-1-2014
291-097-0231	12-13-2013	Adopt(T)	1-1-2014	309-012-0150	12-20-2013	Amend(T)	2-1-2014
291-097-0231	1-17-2014	Adopt(T)	3-1-2014	309-012-0150	6-19-2014	Amend	7-1-2014
291-097-0231	5-5-2014	Adopt	6-1-2014	309-012-0180	12-20-2013	Amend(T)	2-1-2014
291-097-0231(T)	5-5-2014	Repeal	6-1-2014	309-012-0180	6-19-2014	Amend	7-1-2014
291-104-0111	2-12-2014	Amend(T)	3-1-2014	309-012-0190	12-20-2013	Amend(T)	2-1-2014
291-104-0111	5-1-2014	Amend	6-1-2014	309-012-0190	6-19-2014	Amend	7-1-2014
291-104-0111(T)	5-1-2014	Repeal	6-1-2014	309-012-0230	12-20-2013	Adopt(T)	2-1-2014
291-104-0116	2-12-2014	Amend(T)	3-1-2014	309-012-0230	6-19-2014	Adopt	7-1-2014
291-104-0116	5-1-2014	Amend	6-1-2014	309-018-0100	2-3-2014	Adopt	3-1-2014
291-104-0116(T)	5-1-2014	Repeal	6-1-2014	309-018-0100(T)	2-3-2014	Repeal	3-1-2014
291-104-0125	2-12-2014	Amend(T)	3-1-2014	309-018-0105	2-3-2014	Adopt	3-1-2014
291-104-0125	5-1-2014	Amend	6-1-2014	309-018-0105(T)	2-3-2014	Repeal	3-1-2014
291-104-0125(T)	5-1-2014	Repeal	6-1-2014	309-018-0110	2-3-2014	Adopt	3-1-2014
291-104-0135	2-12-2014	Amend(T)	3-1-2014	309-018-0110(T)	2-3-2014	Repeal	3-1-2014
291-104-0135	5-1-2014	Amend	6-1-2014	309-018-0115	2-3-2014	Adopt	3-1-2014
291-104-0135(T)	5-1-2014	Repeal	6-1-2014	309-018-0115(T)	2-3-2014	Repeal	3-1-2014
291-104-0140	2-12-2014	Amend(T)	3-1-2014	309-018-0120	2-3-2014	Adopt	3-1-2014
291-104-0140	5-1-2014	Amend	6-1-2014	309-018-0120(T)	2-3-2014	Repeal	3-1-2014
291-104-0140(T)	5-1-2014	Repeal	6-1-2014	309-018-0125	2-3-2014	Adopt	3-1-2014
291-109-0125	12-13-2013	Suspend	1-1-2014	309-018-0125(T)	2-3-2014	Repeal	3-1-2014
291-109-0125	1-17-2014	Suspend	3-1-2014	309-018-0130	2-3-2014	Adopt	3-1-2014
291-109-0125	3-3-2014	Repeal	4-1-2014	309-018-0130(T)	2-3-2014	Repeal	3-1-2014
291-109-0125(T)	3-3-2014	Repeal	4-1-2014	309-018-0135	2-3-2014	Adopt	3-1-2014
291-109-0180	12-13-2013	Amend(T)	1-1-2014	309-018-0135(T)	2-3-2014	Repeal	3-1-2014
291-109-0180	1-17-2014	Amend(T)	3-1-2014	309-018-0140	2-3-2014	Adopt	3-1-2014
291-109-0180	3-3-2014	Amend	4-1-2014	309-018-0140(T)	2-3-2014	Repeal	3-1-2014
291-109-0180(T)	3-3-2014	Repeal	4-1-2014	309-018-0145	2-3-2014	Adopt	3-1-2014
291-109-0200	12-13-2013	Adopt(T)	1-1-2014	309-018-0145(T)	2-3-2014	Repeal	3-1-2014
291-109-0200	1-17-2014	Adopt(T)	3-1-2014	309-018-0150	2-3-2014	Adopt	3-1-2014
291-109-0200	3-3-2014	Adopt	4-1-2014	309-018-0150(T)	2-3-2014	Repeal	3-1-2014
291-109-0200(T)	3-3-2014	Repeal	4-1-2014	309-018-0155	2-3-2014	Adopt	3-1-2014
291-130-0005	7-8-2014	Amend(T)	8-1-2014	309-018-0155(T)	2-3-2014	Repeal	3-1-2014
291-130-0006	7-8-2014	Amend(T)	8-1-2014	309-018-0160	2-3-2014	Adopt	3-1-2014
291-130-0011	7-8-2014	Amend(T)	8-1-2014	309-018-0160(T)	2-3-2014	Repeal	3-1-2014
291-130-0016	7-8-2014	Amend(T)	8-1-2014	309-018-0165	2-3-2014	Adopt	3-1-2014
291-130-0017	7-8-2014	Adopt(T)	8-1-2014	309-018-0165(T)	2-3-2014	Repeal	3-1-2014
291-130-0018	7-8-2014	Adopt(T)	8-1-2014	309-018-0170	2-3-2014	Adopt	3-1-2014
291-130-0020	7-8-2014	Amend(T)	8-1-2014	309-018-0170(T)	2-3-2014	Repeal	3-1-2014
291-209-0010	5-13-2014	Adopt(T)	6-1-2014	309-018-0175	2-3-2014	Adopt	3-1-2014
291-209-0020	5-13-2014	Adopt(T)	6-1-2014	309-018-0175(T)	2-3-2014	Repeal	3-1-2014
291-209-0030	5-13-2014	Adopt(T)	6-1-2014	309-018-0180	2-3-2014	Adopt	3-1-2014
291-209-0040	5-13-2014	Adopt(T)	6-1-2014	309-018-0180(T)	2-3-2014	Repeal	3-1-2014
291-209-0050	5-13-2014	Adopt(T)	6-1-2014	309-018-0185	2-3-2014	Adopt	3-1-2014
291-209-0060	5-13-2014	Adopt(T)	6-1-2014	309-018-0185(T)	2-3-2014	Repeal	3-1-2014
291-209-0070	5-13-2014	Adopt(T)	6-1-2014	309-018-0190	2-3-2014	Adopt	3-1-2014
291-210-0010	6-25-2014	Adopt(T)	8-1-2014	309-018-0190(T)	2-3-2014	Repeal	3-1-2014
291-210-0020	6-25-2014	Adopt(T)	8-1-2014	309-018-0195	2-3-2014	Adopt	3-1-2014



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309-022-0230(T)	2-3-2014	Repeal	3-1-2014	309-042-0009	7-1-2014	Repeal	8-1-2014
309-032-1500	2-3-2014	Repeal	3-1-2014	309-042-0015	7-1-2014	Repeal	8-1-2014
309-032-1505	2-3-2014	Repeal	3-1-2014	309-042-0030	7-1-2014	Repeal	8-1-2014
309-032-1510	2-3-2014	Repeal	3-1-2014	309-042-0035	7-1-2014	Repeal	8-1-2014
309-032-1515	2-3-2014	Repeal	3-1-2014	309-042-0050	7-1-2014	Repeal	8-1-2014
309-032-1520	2-3-2014	Repeal	3-1-2014	309-042-0060	7-1-2014	Repeal	8-1-2014
309-032-1525	2-3-2014	Repeal	3-1-2014	309-042-0065	7-1-2014	Repeal	8-1-2014
309-032-1530	2-3-2014	Repeal	3-1-2014	309-042-0070	7-1-2014	Repeal	8-1-2014
309-032-1535	2-3-2014	Repeal	3-1-2014	309-042-0075	7-1-2014	Repeal	8-1-2014
309-032-1540	2-3-2014	Repeal	3-1-2014	309-042-0080	7-1-2014	Repeal	8-1-2014
309-032-1545	2-3-2014	Repeal	3-1-2014	309-042-0100	7-1-2014	Repeal	8-1-2014
309-032-1550	2-3-2014	Repeal	3-1-2014	309-042-0110	7-1-2014	Repeal	8-1-2014
309-032-1555	2-3-2014	Repeal	3-1-2014	309-042-0120	7-1-2014	Repeal	8-1-2014
309-032-1560	2-3-2014	Repeal	3-1-2014	309-042-0130	7-1-2014	Repeal	8-1-2014
309-032-1565	2-3-2014	Repeal	3-1-2014	309-042-0140	7-1-2014	Repeal	8-1-2014
309-034-0400	2-3-2014	Repeal	3-1-2014	309-042-0150	7-1-2014	Repeal	8-1-2014
309-034-0410	2-3-2014	Repeal	3-1-2014	309-042-0160	7-1-2014	Repeal	8-1-2014
309-034-0420	2-3-2014	Repeal	3-1-2014	309-042-0170	7-1-2014	Repeal	8-1-2014
309-034-0430	2-3-2014	Repeal	3-1-2014	309-042-0180	7-1-2014	Repeal	8-1-2014
309-034-0440	2-3-2014	Repeal	3-1-2014	309-042-0190	7-1-2014	Repeal	8-1-2014
309-034-0450	2-3-2014	Repeal	3-1-2014	309-042-0200	7-1-2014	Repeal	8-1-2014
309-034-0460	2-3-2014	Repeal	3-1-2014	309-042-0210	7-1-2014	Repeal	8-1-2014
309-034-0470	2-3-2014	Repeal	3-1-2014	309-042-0220	7-1-2014	Repeal	8-1-2014
309-034-0480	2-3-2014	Repeal	3-1-2014	309-043-0230	7-1-2014	Repeal	8-1-2014
309-034-0490	2-3-2014	Repeal	3-1-2014	309-043-0240	7-1-2014	Repeal	8-1-2014
309-034-0500	2-3-2014	Repeal	3-1-2014	309-043-0250	7-1-2014	Repeal	8-1-2014
309-039-0500	12-20-2013	Amend(T)	2-1-2014	309-043-0260	7-1-2014	Repeal	8-1-2014
309-039-0500	6-19-2014	Amend	8-1-2014	309-043-0270	7-1-2014	Repeal	8-1-2014
309-039-0510	12-20-2013	Amend(T)	2-1-2014	309-043-0280	7-1-2014	Repeal	8-1-2014
309-039-0510	6-19-2014	Amend	8-1-2014	309-043-0290	7-1-2014	Repeal	8-1-2014
309-039-0520	12-20-2013	Amend(T)	2-1-2014	309-043-0300	7-1-2014	Repeal	8-1-2014
309-039-0520	6-19-2014	Amend	8-1-2014	309-043-0310	7-1-2014	Repeal	8-1-2014
309-039-0530	12-20-2013	Amend(T)	2-1-2014	309-043-0320	7-1-2014	Repeal	8-1-2014
309-039-0530	6-19-2014	Amend	8-1-2014	309-043-0330	7-1-2014	Repeal	8-1-2014
309-039-0540	12-20-2013	Amend(T)	2-1-2014	309-043-0340	7-1-2014	Repeal	8-1-2014
309-039-0540	6-19-2014	Amend	8-1-2014	309-043-0350	7-1-2014	Repeal	8-1-2014
309-039-0550	6-19-2014	Repeal	8-1-2014	309-043-0360	7-1-2014	Repeal	8-1-2014
309-039-0560	6-19-2014	Amend	8-1-2014	309-043-0370	7-1-2014	Repeal	8-1-2014
309-039-0570	12-20-2013	Amend(T)	2-1-2014	309-043-0380	7-1-2014	Repeal	8-1-2014
309-039-0570	6-19-2014	Amend	8-1-2014	309-043-0390	7-1-2014	Repeal	8-1-2014
309-041-1190	4-1-2014	Repeal	5-1-2014	309-043-0400	7-1-2014	Repeal	8-1-2014
309-041-1200	4-1-2014	Repeal	5-1-2014	309-043-0410	7-1-2014	Repeal	8-1-2014
309-041-1210	4-1-2014	Repeal	5-1-2014	309-043-0420	7-1-2014	Repeal	8-1-2014
309-041-1220	4-1-2014	Repeal	5-1-2014	309-043-0430	7-1-2014	Repeal	8-1-2014
309-041-1230	4-1-2014	Repeal	5-1-2014	309-043-0440	7-1-2014	Repeal	8-1-2014
309-041-1240	4-1-2014	Repeal	5-1-2014	309-043-0450	7-1-2014	Repeal	8-1-2014
309-041-1250	4-1-2014	Repeal	5-1-2014	309-043-0460	7-1-2014	Repeal	8-1-2014
309-042-0000	7-1-2014	Repeal	8-1-2014	309-043-0470	7-1-2014	Repeal	8-1-2014
309-042-0001	7-1-2014	Repeal	8-1-2014	309-043-0480	7-1-2014	Repeal	8-1-2014
309-042-0002	7-1-2014	Repeal	8-1-2014	309-043-0490	7-1-2014	Repeal	8-1-2014
309-042-0003	7-1-2014	Repeal	8-1-2014	309-043-0500	7-1-2014	Repeal	8-1-2014
309-042-0004	7-1-2014	Repeal	8-1-2014	309-043-0510	7-1-2014	Repeal	8-1-2014
309-042-0005	7-1-2014	Repeal	8-1-2014	309-043-0520	7-1-2014	Repeal	8-1-2014
309-042-0006	7-1-2014	Repeal	8-1-2014	309-043-0530	7-1-2014	Repeal	8-1-2014
309-042-0007	7-1-2014	Repeal	8-1-2014	309-043-0540	7-1-2014	Repeal	8-1-2014

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309-043-0550	7-1-2014	Repeal	8-1-2014	330-110-0060	12-12-2013	Adopt	1-1-2014
309-043-0560	7-1-2014	Repeal	8-1-2014	330-135-0010	12-23-2013	Amend	2-1-2014
309-043-0570	7-1-2014	Repeal	8-1-2014	330-135-0015	12-23-2013	Amend	2-1-2014
309-043-0580	7-1-2014	Repeal	8-1-2014	330-135-0018	12-23-2013	Amend	2-1-2014
309-100-0000	1-28-2014	Repeal	3-1-2014	330-135-0020	12-23-2013	Amend	2-1-2014
309-114-0000	4-24-2014	Amend	6-1-2014	330-135-0025	12-23-2013	Amend	2-1-2014
309-114-0010	4-24-2014	Amend	6-1-2014	330-135-0030	12-23-2013	Amend	2-1-2014
309-114-0020	4-24-2014	Amend	6-1-2014	330-135-0035	12-23-2013	Amend	2-1-2014
325-005-0015	3-21-2014	Amend	5-1-2014	330-135-0040	12-23-2013	Amend	2-1-2014
325-035-0001	7-1-2014	Adopt	7-1-2014	330-135-0045	12-23-2013	Amend	2-1-2014
325-035-0005	7-1-2014	Adopt	7-1-2014	330-135-0047	12-23-2013	Repeal	2-1-2014
325-035-0010	7-1-2014	Adopt	7-1-2014	330-135-0048	12-23-2013	Am. & Ren.	2-1-2014
325-035-0015	7-1-2014	Adopt	7-1-2014	330-135-0050	12-23-2013	Amend	2-1-2014
325-035-0020	7-1-2014	Adopt	7-1-2014	330-135-0055	12-23-2013	Amend	2-1-2014
325-035-0025	7-1-2014	Adopt	7-1-2014	330-135-0060	12-23-2013	Adopt	2-1-2014
325-035-0030	7-1-2014	Adopt	7-1-2014	330-160-0015	2-10-2014	Amend	3-1-2014
325-035-0035	7-1-2014	Adopt	7-1-2014	330-160-0020	2-10-2014	Amend	3-1-2014
325-035-0040	7-1-2014	Adopt	7-1-2014	330-160-0025	2-10-2014	Amend	3-1-2014
325-035-0045	7-1-2014	Adopt	7-1-2014	330-160-0030	2-10-2014	Amend	3-1-2014
330-063-0000	7-1-2014	Amend	8-1-2014	330-160-0035	2-10-2014	Adopt	3-1-2014
330-063-0010	7-1-2014	Amend	8-1-2014	330-160-0037	2-10-2014	Adopt	3-1-2014
330-063-0015	7-1-2014	Adopt	8-1-2014	330-160-0038	2-10-2014	Adopt	3-1-2014
330-063-0020	7-1-2014	Amend	8-1-2014	330-160-0040	2-10-2014	Amend	3-1-2014
330-063-0025	7-1-2014	Adopt	8-1-2014	330-160-0050	2-10-2014	Amend	3-1-2014
330-063-0030	7-1-2014	Amend	8-1-2014	330-160-0060	2-10-2014	Adopt	3-1-2014
330-063-0040	7-1-2014	Amend	8-1-2014	330-160-0070	2-10-2014	Adopt	3-1-2014
330-070-0014	1-1-2014	Amend	2-1-2014	330-170-0010	1-1-2014	Amend	2-1-2014
330-070-0019	1-1-2014	Repeal	2-1-2014	330-170-0020	1-1-2014	Amend	2-1-2014
330-070-0020	1-1-2014	Amend	2-1-2014	330-170-0030	1-1-2014	Amend	2-1-2014
330-070-0021	1-1-2014	Amend	2-1-2014	330-170-0040	1-1-2014	Amend	2-1-2014
330-070-0022	1-1-2014	Amend	2-1-2014	330-170-0050	1-1-2014	Amend	2-1-2014
330-070-0025	1-1-2014	Amend	2-1-2014	330-170-0060	1-1-2014	Amend	2-1-2014
330-070-0026	1-1-2014	Amend	2-1-2014	331-010-0060	4-3-2014	Adopt(T)	5-1-2014
330-070-0029	1-1-2014	Amend	2-1-2014	331-010-0070	4-3-2014	Adopt(T)	5-1-2014
330-070-0064	1-1-2014	Amend	2-1-2014	331-410-0050	7-1-2014	Amend(T)	8-1-2014
330-070-0073	1-1-2014	Amend	2-1-2014	331-420-0020	7-1-2014	Amend(T)	8-1-2014
330-070-0073	5-15-2014	Amend(T)	6-1-2014	331-440-0000	2-1-2014	Amend	2-1-2014
330-090-0133	4-1-2014	Amend	5-1-2014	331-710-0050	1-1-2014	Amend	2-1-2014
330-092-0005	1-1-2014	Amend	2-1-2014	331-710-0060	1-1-2014	Amend	2-1-2014
330-092-0010	1-1-2014	Amend	2-1-2014	331-710-0070	1-1-2014	Amend	2-1-2014
330-092-0015	1-1-2014	Amend	2-1-2014	331-710-0080	1-1-2014	Amend	2-1-2014
330-092-0020	1-1-2014	Amend	2-1-2014	331-710-0090	1-1-2014	Amend	2-1-2014
330-092-0025	1-1-2014	Amend	2-1-2014	331-710-0100	1-1-2014	Amend	2-1-2014
330-092-0030	1-1-2014	Amend	2-1-2014	331-710-0110	1-1-2014	Amend	2-1-2014
330-092-0035	1-1-2014	Amend	2-1-2014	331-720-0010	1-1-2014	Amend	2-1-2014
330-092-0040	1-1-2014	Amend	2-1-2014	331-720-0015	1-1-2014	Amend	2-1-2014
330-092-0045	1-1-2014	Amend	2-1-2014	331-720-0020	1-1-2014	Amend	2-1-2014
330-092-0050	1-1-2014	Amend	2-1-2014	331-810-0055	1-17-2014	Amend(T)	3-1-2014
330-092-0055	1-1-2014	Amend	2-1-2014	331-810-0055	6-1-2014	Amend	7-1-2014
330-092-0060	1-1-2014	Repeal	2-1-2014	331-900-0010	1-1-2014	Amend	2-1-2014
330-092-0065	1-1-2014	Repeal	2-1-2014	331-900-0015	1-1-2014	Amend	2-1-2014
330-092-0070	1-1-2014	Amend	2-1-2014	331-900-0020	1-1-2014	Amend	2-1-2014
330-110-0010	12-12-2013	Amend	1-1-2014	331-900-0040	1-1-2014	Amend	2-1-2014
330-110-0012	3-7-2014	Adopt	4-1-2014	331-900-0050	1-1-2014	Amend	2-1-2014
330-110-0040	12-12-2013	Amend	1-1-2014	331-900-0077	1-1-2014	Adopt	2-1-2014
330-110-0040(T)	12-12-2013	Repeal	1-1-2014	331-900-0085	1-1-2014	Amend	2-1-2014

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331-900-0095	1-1-2014	Amend	2-1-2014	333-008-1030	1-15-2014	Adopt(T)	2-1-2014
331-900-0097	1-1-2014	Amend	2-1-2014	333-008-1030	7-11-2014	Adopt	8-1-2014
331-900-0098	1-1-2014	Amend	2-1-2014	333-008-1030(T)	7-11-2014	Repeal	8-1-2014
331-900-0099	1-1-2014	Amend	2-1-2014	333-008-1040	1-15-2014	Adopt(T)	2-1-2014
331-900-0115	1-1-2014	Amend	2-1-2014	333-008-1040	7-11-2014	Adopt	8-1-2014
331-905-0020	1-1-2014	Amend	2-1-2014	333-008-1040(T)	7-11-2014	Repeal	8-1-2014
331-905-0030	1-1-2014	Amend	2-1-2014	333-008-1050	1-15-2014	Adopt(T)	2-1-2014
331-905-0052	1-1-2014	Amend	2-1-2014	333-008-1050	7-11-2014	Adopt	8-1-2014
331-905-0058	1-1-2014	Amend	2-1-2014	333-008-1050(T)	7-11-2014	Repeal	8-1-2014
331-905-0095	1-1-2014	Amend	2-1-2014	333-008-1060	1-15-2014	Adopt(T)	2-1-2014
331-910-0005	1-1-2014	Amend	2-1-2014	333-008-1060	7-11-2014	Adopt	8-1-2014
331-910-0010	1-1-2014	Amend	2-1-2014	333-008-1060(T)	7-11-2014	Repeal	8-1-2014
331-910-0055	1-1-2014	Amend	2-1-2014	333-008-1070	1-15-2014	Adopt(T)	2-1-2014
331-910-0060	1-1-2014	Amend	2-1-2014	333-008-1070	7-11-2014	Adopt	8-1-2014
331-915-0020	1-1-2014	Amend	2-1-2014	333-008-1070(T)	7-11-2014	Repeal	8-1-2014
331-915-0055	1-1-2014	Amend	2-1-2014	333-008-1080	1-15-2014	Adopt(T)	2-1-2014
331-915-0060	1-1-2014	Amend	2-1-2014	333-008-1080	7-11-2014	Adopt	8-1-2014
331-915-0065	1-1-2014	Amend	2-1-2014	333-008-1080(T)	7-11-2014	Repeal	8-1-2014
331-915-0070	1-1-2014	Amend	2-1-2014	333-008-1090	1-15-2014	Adopt(T)	2-1-2014
331-925-0050	1-1-2014	Amend	2-1-2014	333-008-1090	7-11-2014	Adopt	8-1-2014
331-940-0000	1-1-2014	Amend	2-1-2014	333-008-1090(T)	7-11-2014	Repeal	8-1-2014
331-950-0040	1-1-2014	Amend	2-1-2014	333-008-1100	1-15-2014	Adopt(T)	2-1-2014
332-020-0010	1-1-2014	Amend	2-1-2014	333-008-1100	7-11-2014	Adopt	8-1-2014
332-020-0015	1-1-2014	Amend	2-1-2014	333-008-1100(T)	7-11-2014	Repeal	8-1-2014
333-008-0010	1-13-2014	Amend	2-1-2014	333-008-1110	1-15-2014	Adopt(T)	2-1-2014
333-008-0010	1-15-2014	Amend(T)	2-1-2014	333-008-1110	7-11-2014	Adopt	8-1-2014
333-008-0010	7-11-2014	Amend	8-1-2014	333-008-1110(T)	7-11-2014	Repeal	8-1-2014
333-008-0010(T)	7-11-2014	Repeal	8-1-2014	333-008-1120	1-15-2014	Adopt(T)	2-1-2014
333-008-0020	1-13-2014	Amend	2-1-2014	333-008-1120	7-11-2014	Adopt	8-1-2014
333-008-0020	1-15-2014	Amend(T)	2-1-2014	333-008-1120(T)	7-11-2014	Repeal	8-1-2014
333-008-0020	6-5-2014	Amend	7-1-2014	333-008-1130	1-15-2014	Adopt(T)	2-1-2014
333-008-0020	7-11-2014	Amend	8-1-2014	333-008-1130	7-11-2014	Adopt	8-1-2014
333-008-0020(T)	1-13-2014	Repeal	2-1-2014	333-008-1130(T)	7-11-2014	Repeal	8-1-2014
333-008-0020(T)	7-11-2014	Repeal	8-1-2014	333-008-1140	1-15-2014	Adopt(T)	2-1-2014
333-008-0025	1-15-2014	Amend(T)	2-1-2014	333-008-1140	7-11-2014	Adopt	8-1-2014
333-008-0025	7-11-2014	Amend	8-1-2014	333-008-1140(T)	7-11-2014	Repeal	8-1-2014
333-008-0025(T)	7-11-2014	Repeal	8-1-2014	333-008-1150	1-15-2014	Adopt(T)	2-1-2014
333-008-0045	1-13-2014	Amend	2-1-2014	333-008-1150	7-11-2014	Adopt	8-1-2014
333-008-0045	1-15-2014	Amend(T)	2-1-2014	333-008-1150(T)	7-11-2014	Repeal	8-1-2014
333-008-0045	7-11-2014	Amend	8-1-2014	333-008-1160	1-15-2014	Adopt(T)	2-1-2014
333-008-0045(T)	7-11-2014	Repeal	8-1-2014	333-008-1160	7-11-2014	Adopt	8-1-2014
333-008-0050	1-15-2014	Amend(T)	2-1-2014	333-008-1160(T)	7-11-2014	Repeal	8-1-2014
333-008-0050	7-11-2014	Amend	8-1-2014	333-008-1170	1-15-2014	Adopt(T)	2-1-2014
333-008-0050(T)	7-11-2014	Repeal	8-1-2014	333-008-1170	7-11-2014	Adopt	8-1-2014
333-008-0120	1-15-2014	Amend(T)	2-1-2014	333-008-1170(T)	7-11-2014	Repeal	8-1-2014
333-008-0120	7-11-2014	Amend	8-1-2014	333-008-1180	1-15-2014	Adopt(T)	2-1-2014
333-008-0120(T)	7-11-2014	Repeal	8-1-2014	333-008-1180	7-11-2014	Adopt	8-1-2014
333-008-1000	1-15-2014	Adopt(T)	2-1-2014	333-008-1180(T)	7-11-2014	Repeal	8-1-2014
333-008-1000	7-11-2014	Adopt	8-1-2014	333-008-1190	1-15-2014	Adopt(T)	2-1-2014
333-008-1000(T)	7-11-2014	Repeal	8-1-2014	333-008-1190	2-21-2014	Adopt(T)	4-1-2014
333-008-1010	1-15-2014	Adopt(T)	2-1-2014	333-008-1190	7-11-2014	Adopt	8-1-2014
333-008-1010	7-11-2014	Adopt	8-1-2014	333-008-1190(T)	2-21-2014	Suspend	4-1-2014
333-008-1010(T)	7-11-2014	Repeal	8-1-2014	333-008-1190(T)	7-11-2014	Repeal	8-1-2014
333-008-1020	1-15-2014	Adopt(T)	2-1-2014	333-008-1200	1-15-2014	Adopt(T)	2-1-2014
333-008-1020	7-11-2014	Adopt	8-1-2014	333-008-1200	7-11-2014	Adopt	8-1-2014

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333-008-1200(T)	7-11-2014	Repeal	8-1-2014	333-011-0073	1-1-2014	Repeal	2-1-2014
333-008-1210	1-15-2014	Adopt(T)	2-1-2014	333-011-0076	1-1-2014	Am. & Ren.	2-1-2014
333-008-1210	7-11-2014	Adopt	8-1-2014	333-011-0096	1-1-2014	Repeal	2-1-2014
333-008-1210(T)	7-11-2014	Repeal	8-1-2014	333-011-0101	1-1-2014	Am. & Ren.	2-1-2014
333-008-1220	1-15-2014	Adopt(T)	2-1-2014	333-011-0106	1-1-2014	Am. & Ren.	2-1-2014
333-008-1220	7-11-2014	Adopt	8-1-2014	333-011-0110	1-1-2014	Am. & Ren.	2-1-2014
333-008-1220(T)	7-11-2014	Repeal	8-1-2014	333-011-0116	1-1-2014	Repeal	2-1-2014
333-008-1225	4-1-2014	Adopt(T)	5-1-2014	333-011-0155	1-1-2014	Repeal	2-1-2014
333-008-1230	1-15-2014	Adopt(T)	2-1-2014	333-011-0200	1-1-2014	Am. & Ren.	2-1-2014
333-008-1230	7-11-2014	Adopt	8-1-2014	333-011-0205	1-1-2014	Adopt	2-1-2014
333-008-1230(T)	7-11-2014	Repeal	8-1-2014	333-011-0210	1-1-2014	Adopt	2-1-2014
333-008-1240	1-15-2014	Adopt(T)	2-1-2014	333-011-0215	1-1-2014	Adopt	2-1-2014
333-008-1240(T)	4-1-2014	Suspend	5-1-2014	333-011-0220	1-1-2014	Adopt	2-1-2014
333-008-1245	4-1-2014	Adopt(T)	5-1-2014	333-011-0225	1-1-2014	Adopt	2-1-2014
333-008-1250	1-15-2014	Adopt(T)	2-1-2014	333-011-0230	1-1-2014	Adopt	2-1-2014
333-008-1250	7-11-2014	Adopt	8-1-2014	333-011-0235	1-1-2014	Adopt	2-1-2014
333-008-1250(T)	7-11-2014	Repeal	8-1-2014	333-011-0240	1-1-2014	Adopt	2-1-2014
333-008-1260	1-15-2014	Adopt(T)	2-1-2014	333-011-0245	1-1-2014	Adopt	2-1-2014
333-008-1260	7-11-2014	Adopt	8-1-2014	333-011-0250	1-1-2014	Adopt	2-1-2014
333-008-1260(T)	7-11-2014	Repeal	8-1-2014	333-011-0255	1-1-2014	Adopt	2-1-2014
333-008-1270	1-15-2014	Adopt(T)	2-1-2014	333-011-0260	1-1-2014	Adopt	2-1-2014
333-008-1270(T)	4-1-2014	Suspend	5-1-2014	333-011-0265	1-1-2014	Adopt	2-1-2014
333-008-1275	4-1-2014	Adopt(T)	5-1-2014	333-011-0270	1-1-2014	Adopt	2-1-2014
333-008-1280	1-15-2014	Adopt(T)	2-1-2014	333-011-0280	1-1-2014	Adopt	2-1-2014
333-008-1280	7-11-2014	Adopt	8-1-2014	333-011-0285	1-1-2014	Adopt	2-1-2014
333-008-1280(T)	7-11-2014	Repeal	8-1-2014	333-011-0300	1-1-2014	Adopt	2-1-2014
333-008-1290	1-15-2014	Adopt(T)	2-1-2014	333-011-0305	1-1-2014	Adopt	2-1-2014
333-008-1290	7-11-2014	Adopt	8-1-2014	333-011-0310	1-1-2014	Adopt	2-1-2014
333-008-1290(T)	7-11-2014	Repeal	8-1-2014	333-011-0320	1-1-2014	Adopt	2-1-2014
333-008-1400	4-1-2014	Adopt(T)	5-1-2014	333-011-0325	1-1-2014	Adopt	2-1-2014
333-010-0105	4-22-2014	Amend(T)	6-1-2014	333-011-0330	1-1-2014	Adopt	2-1-2014
333-010-0155	4-22-2014	Amend(T)	6-1-2014	333-014-0040	6-20-2014	Amend(T)	8-1-2014
333-010-0205	4-18-2014	Amend(T)	6-1-2014	333-014-0042	6-20-2014	Adopt(T)	8-1-2014
333-010-0215	4-18-2014	Amend(T)	6-1-2014	333-014-0080	6-20-2014	Adopt(T)	8-1-2014
333-010-0220	4-18-2014	Amend(T)	6-1-2014	333-014-0090	6-20-2014	Adopt(T)	8-1-2014
333-010-0225	4-18-2014	Amend(T)	6-1-2014	333-014-0100	6-20-2014	Adopt(T)	8-1-2014
333-010-0235	4-18-2014	Amend(T)	6-1-2014	333-017-0000	1-1-2014	Amend	2-1-2014
333-010-0245	4-18-2014	Amend(T)	6-1-2014	333-018-0005	1-1-2014	Amend	2-1-2014
333-010-0250	4-18-2014	Amend(T)	6-1-2014	333-018-0010	1-1-2014	Amend	2-1-2014
333-010-0260	4-18-2014	Amend(T)	6-1-2014	333-018-0015	1-1-2014	Amend	2-1-2014
333-010-0265	4-18-2014	Amend(T)	6-1-2014	333-018-0018	1-1-2014	Amend	2-1-2014
333-010-0270	4-18-2014	Amend(T)	6-1-2014	333-018-0020	1-1-2014	Amend	2-1-2014
333-010-0275	4-18-2014	Amend(T)	6-1-2014	333-018-0035	1-1-2014	Amend	2-1-2014
333-010-0280	4-18-2014	Amend(T)	6-1-2014	333-018-0100	6-9-2014	Amend	7-1-2014
333-010-0285	4-18-2014	Amend(T)	6-1-2014	333-018-0110	6-9-2014	Amend	7-1-2014
333-010-0290	4-18-2014	Amend(T)	6-1-2014	333-018-0115	6-9-2014	Amend	7-1-2014
333-011-0006	1-1-2014	Repeal	2-1-2014	333-018-0120	6-9-2014	Amend	7-1-2014
333-011-0011	1-1-2014	Repeal	2-1-2014	333-018-0125	6-9-2014	Amend	7-1-2014
333-011-0016	1-1-2014	Repeal	2-1-2014	333-018-0127	6-9-2014	Adopt	7-1-2014
333-011-0021	1-1-2014	Repeal	2-1-2014	333-018-0130	6-9-2014	Amend	7-1-2014
333-011-0043	1-1-2014	Repeal	2-1-2014	333-018-0135	6-9-2014	Amend	7-1-2014
333-011-0047	1-1-2014	Am. & Ren.	2-1-2014	333-019-0010	1-1-2014	Amend	2-1-2014
333-011-0048	1-1-2014	Repeal	2-1-2014	333-019-0014	1-1-2014	Amend	2-1-2014
333-011-0061	1-1-2014	Repeal	2-1-2014	333-019-0031	1-1-2014	Amend	2-1-2014
333-011-0067	1-1-2014	Repeal	2-1-2014	333-019-0046	1-1-2014	Repeal	2-1-2014
333-011-0072	1-1-2014	Repeal	2-1-2014	333-019-0052	1-1-2014	Adopt	2-1-2014

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333-024-0210	5-1-2014	Amend	5-1-2014	333-061-0210	5-8-2014	Amend	6-1-2014
333-024-0215	5-1-2014	Amend	5-1-2014	333-061-0220	5-8-2014	Amend	6-1-2014
333-024-0220	5-1-2014	Amend	5-1-2014	333-061-0225	5-8-2014	Amend	6-1-2014
333-024-0225	5-1-2014	Amend	5-1-2014	333-061-0228	5-8-2014	Amend	6-1-2014
333-024-0230	5-1-2014	Amend	5-1-2014	333-061-0230	5-8-2014	Amend	6-1-2014
333-024-0231	5-1-2014	Amend	5-1-2014	333-061-0232	5-8-2014	Adopt	6-1-2014
333-024-0232	5-1-2014	Amend	5-1-2014	333-061-0235	5-8-2014	Amend	6-1-2014
333-024-0235	5-1-2014	Amend	5-1-2014	333-061-0245	5-8-2014	Amend	6-1-2014
333-024-0240	1-30-2014	Amend	3-1-2014	333-061-0250	5-8-2014	Amend	6-1-2014
333-024-0240	5-1-2014	Amend	5-1-2014	333-061-0260	5-8-2014	Amend	6-1-2014
333-024-0241	1-30-2014	Repeal	3-1-2014	333-061-0265	5-8-2014	Amend	6-1-2014
333-028-0200	1-1-2014	Adopt	2-1-2014	333-061-0270	5-8-2014	Amend	6-1-2014
333-028-0210	1-1-2014	Adopt	2-1-2014	333-061-0272	5-8-2014	Amend	6-1-2014
333-028-0220	1-1-2014	Adopt	2-1-2014	333-061-0290	5-8-2014	Repeal	6-1-2014
333-028-0230	1-1-2014	Adopt	2-1-2014	333-072-0200	6-2-2014	Adopt	7-1-2014
333-028-0240	1-1-2014	Adopt	2-1-2014	333-072-0205	6-2-2014	Adopt	7-1-2014
333-028-0250	1-1-2014	Adopt	2-1-2014	333-072-0210	6-2-2014	Adopt	7-1-2014
333-028-0260	4-1-2014	Adopt	5-1-2014	333-072-0215	6-2-2014	Adopt	7-1-2014
333-028-0270	4-1-2014	Adopt	5-1-2014	333-072-0220	6-2-2014	Adopt	7-1-2014
333-028-0280	4-1-2014	Adopt	5-1-2014	333-072-0225	6-2-2014	Adopt	7-1-2014
333-050-0010	3-1-2014	Amend	3-1-2014	333-076-0670	1-1-2014	Amend(T)	2-1-2014
333-050-0020	3-1-2014	Amend	3-1-2014	333-076-0670	6-17-2014	Amend	8-1-2014
333-050-0040	3-1-2014	Amend	3-1-2014	333-076-0670(T)	6-17-2014	Repeal	8-1-2014
333-050-0050	3-1-2014	Amend	3-1-2014	333-081-0000	2-1-2014	Adopt	3-1-2014
333-050-0060	3-1-2014	Amend	3-1-2014	333-081-0005	2-1-2014	Adopt	3-1-2014
333-050-0070	3-1-2014	Amend	3-1-2014	333-081-0010	2-1-2014	Adopt	3-1-2014
333-050-0080	3-1-2014	Amend	3-1-2014	333-081-0015	2-1-2014	Adopt	3-1-2014
333-050-0100	3-1-2014	Amend	3-1-2014	333-081-0020	2-1-2014	Adopt	3-1-2014
333-050-0110	3-1-2014	Amend	3-1-2014	333-081-0025	2-1-2014	Adopt	3-1-2014
333-050-0120	3-1-2014	Amend	3-1-2014	333-081-0030	2-1-2014	Adopt	3-1-2014
333-050-0130	3-1-2014	Amend	3-1-2014	333-081-0035	2-1-2014	Adopt	3-1-2014
333-050-0140	3-1-2014	Amend	3-1-2014	333-081-0040	2-1-2014	Adopt	3-1-2014
333-052-0040	1-30-2014	Amend	3-1-2014	333-081-0045	2-1-2014	Adopt	3-1-2014
333-052-0043	1-30-2014	Amend	3-1-2014	333-081-0050	2-1-2014	Adopt	3-1-2014
333-052-0044	1-30-2014	Amend	3-1-2014	333-081-0055	2-1-2014	Adopt	3-1-2014
333-052-0120	1-30-2014	Amend	3-1-2014	333-081-0060	2-1-2014	Adopt	3-1-2014
333-053-0000	1-30-2014	Adopt	3-1-2014	333-081-0065	2-1-2014	Adopt	3-1-2014
333-054-0052	1-30-2014	Adopt	3-1-2014	333-081-0070	2-1-2014	Adopt	3-1-2014
333-055-0100	11-19-2013	Adopt	1-1-2014	333-081-0075	2-1-2014	Adopt	3-1-2014
333-055-0100(T)	11-19-2013	Repeal	1-1-2014	333-081-0080	2-1-2014	Adopt	3-1-2014
333-055-0105	11-19-2013	Adopt	1-1-2014	333-081-0085	2-1-2014	Adopt	3-1-2014
333-055-0105(T)	11-19-2013	Repeal	1-1-2014	333-081-0090	2-1-2014	Adopt	3-1-2014
333-055-0110	11-19-2013	Adopt	1-1-2014	333-106-0735	1-1-2014	Adopt	2-1-2014
333-055-0110(T)	11-19-2013	Repeal	1-1-2014	333-116-0660	1-1-2014	Amend	2-1-2014
333-055-0115	11-19-2013	Adopt	1-1-2014	333-116-0680	1-1-2014	Amend	2-1-2014
333-056-0020	1-1-2014	Amend	2-1-2014	333-116-0683	1-1-2014	Amend	2-1-2014
333-056-0030	1-1-2014	Amend	2-1-2014	333-116-0687	1-1-2014	Amend	2-1-2014
333-056-0040	1-1-2014	Amend	2-1-2014	333-116-0690	1-1-2014	Amend	2-1-2014
333-056-0045	1-1-2014	Adopt	2-1-2014	333-116-0700	1-1-2014	Amend	2-1-2014
333-056-0050	1-1-2014	Amend	2-1-2014	333-116-0715	1-1-2014	Amend	2-1-2014
333-061-0020	5-8-2014	Amend	6-1-2014	333-118-0040	1-1-2014	Amend	2-1-2014
333-061-0065	5-8-2014	Amend	6-1-2014	333-119-0010	1-1-2014	Amend	2-1-2014
333-061-0072	5-8-2014	Amend	6-1-2014	333-119-0090	1-1-2014	Amend	2-1-2014
333-061-0073	5-8-2014	Amend	6-1-2014	333-119-0110	1-1-2014	Amend	2-1-2014
333-061-0090	5-8-2014	Amend	6-1-2014	333-520-0060	1-1-2014	Amend(T)	2-1-2014

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333-520-0060(T)	6-17-2014	Repeal	8-1-2014	340-012-0067	1-6-2014	Amend	2-1-2014
334-010-0005	1-1-2014	Amend	1-1-2014	340-012-0068	1-6-2014	Amend	2-1-2014
334-010-0006	1-1-2014	Adopt	1-1-2014	340-012-0071	1-6-2014	Amend	2-1-2014
334-010-0010	1-1-2014	Amend	1-1-2014	340-012-0072	1-6-2014	Amend	2-1-2014
334-010-0033	1-1-2014	Amend	1-1-2014	340-012-0073	1-6-2014	Amend	2-1-2014
334-010-0050	1-1-2014	Amend	1-1-2014	340-012-0074	1-6-2014	Amend	2-1-2014
334-020-0005	1-1-2014	Amend	1-1-2014	340-012-0079	1-6-2014	Amend	2-1-2014
334-040-0010	1-1-2014	Amend	1-1-2014	340-012-0081	1-6-2014	Amend	2-1-2014
335-005-0026	5-19-2014	Adopt(T)	6-1-2014	340-012-0082	1-6-2014	Amend	2-1-2014
335-060-0007	3-7-2014	Amend	4-1-2014	340-012-0083	1-6-2014	Amend	2-1-2014
337-021-0055	7-1-2014	Adopt	7-1-2014	340-012-0097	1-6-2014	Amend	2-1-2014
340-011-0005	1-6-2014	Amend	2-1-2014	340-012-0130	1-6-2014	Amend	2-1-2014
340-011-0010	1-6-2014	Amend	2-1-2014	340-012-0135	1-6-2014	Amend	2-1-2014
340-011-0024	1-6-2014	Amend	2-1-2014	340-012-0140	1-6-2014	Amend	2-1-2014
340-011-0029	1-6-2014	Amend	2-1-2014	340-012-0145	1-6-2014	Amend	2-1-2014
340-011-0046	1-6-2014	Amend	2-1-2014	340-012-0150	1-6-2014	Amend	2-1-2014
340-011-0053	1-6-2014	Amend	2-1-2014	340-012-0155	1-6-2014	Amend	2-1-2014
340-011-0061	1-6-2014	Amend	2-1-2014	340-012-0160	1-6-2014	Amend	2-1-2014
340-011-0310	1-6-2014	Amend	2-1-2014	340-012-0162	1-6-2014	Amend	2-1-2014
340-011-0330	1-6-2014	Amend	2-1-2014	340-012-0165	1-6-2014	Amend	2-1-2014
340-011-0340	1-6-2014	Amend	2-1-2014	340-012-0170	1-6-2014	Amend	2-1-2014
340-011-0360	1-6-2014	Amend	2-1-2014	340-018-0030	1-2-2014	Amend	2-1-2014
340-011-0370	1-6-2014	Amend	2-1-2014	340-040-0020	12-23-2013	Amend	2-1-2014
340-011-0380	1-6-2014	Amend	2-1-2014	340-040-0080	12-23-2013	Amend	2-1-2014
340-011-0390	1-6-2014	Amend	2-1-2014	340-041-0009	12-23-2013	Amend	2-1-2014
340-011-0500	1-6-2014	Amend	2-1-2014	340-041-0033	4-18-2014	Amend	2-1-2014
340-011-0510	1-6-2014	Amend	2-1-2014	340-054-0010	2-3-2014	Amend	3-1-2014
340-011-0515	1-6-2014	Amend	2-1-2014	340-054-0011	2-3-2014	Amend	3-1-2014
340-011-0520	1-6-2014	Amend	2-1-2014	340-054-0071	2-3-2014	Adopt	3-1-2014
340-011-0525	1-6-2014	Amend	2-1-2014	340-054-0072	2-3-2014	Adopt	3-1-2014
340-011-0530	1-6-2014	Amend	2-1-2014	340-071-0100	1-2-2014	Amend	2-1-2014
340-011-0535	1-6-2014	Amend	2-1-2014	340-071-0115	1-2-2014	Amend	2-1-2014
340-011-0540	1-6-2014	Amend	2-1-2014	340-071-0120	1-2-2014	Amend	2-1-2014
340-011-0545	1-6-2014	Amend	2-1-2014	340-071-0130	1-2-2014	Amend	2-1-2014
340-011-0550	1-6-2014	Amend	2-1-2014	340-071-0131	1-2-2014	Repeal	2-1-2014
340-011-0555	1-6-2014	Amend	2-1-2014	340-071-0135	1-2-2014	Amend	2-1-2014
340-011-0565	1-6-2014	Amend	2-1-2014	340-071-0140	1-2-2014	Amend	2-1-2014
340-011-0570	1-6-2014	Amend	2-1-2014	340-071-0150	1-2-2014	Amend	2-1-2014
340-011-0573	1-6-2014	Amend	2-1-2014	340-071-0155	1-2-2014	Amend	2-1-2014
340-011-0575	1-6-2014	Amend	2-1-2014	340-071-0160	1-2-2014	Amend	2-1-2014
340-011-0580	1-6-2014	Amend	2-1-2014	340-071-0162	1-2-2014	Amend	2-1-2014
340-011-0585	1-6-2014	Amend	2-1-2014	340-071-0165	1-2-2014	Amend	2-1-2014
340-011-0605	1-6-2014	Repeal	2-1-2014	340-071-0170	1-2-2014	Amend	2-1-2014
340-012-0026	1-6-2014	Amend	2-1-2014	340-071-0205	1-2-2014	Amend	2-1-2014
340-012-0027	1-6-2014	Repeal	2-1-2014	340-071-0215	1-2-2014	Amend	2-1-2014
340-012-0028	1-6-2014	Amend	2-1-2014	340-071-0220	1-2-2014	Amend	2-1-2014
340-012-0030	1-6-2014	Amend	2-1-2014	340-071-0260	1-2-2014	Amend	2-1-2014
340-012-0038	1-6-2014	Amend	2-1-2014	340-071-0265	1-2-2014	Amend	2-1-2014
340-012-0041	1-6-2014	Amend	2-1-2014	340-071-0270	1-2-2014	Repeal	2-1-2014
340-012-0045	1-6-2014	Amend	2-1-2014	340-071-0275	1-2-2014	Amend	2-1-2014
340-012-0053	1-6-2014	Amend	2-1-2014	340-071-0290	1-2-2014	Amend	2-1-2014
340-012-0054	1-6-2014	Amend	2-1-2014	340-071-0295	1-2-2014	Amend	2-1-2014
340-012-0055	1-6-2014	Amend	2-1-2014	340-071-0302	1-2-2014	Amend	2-1-2014
340-012-0060	1-6-2014	Amend	2-1-2014	340-071-0325	1-2-2014	Amend	2-1-2014
340-012-0065	1-6-2014	Amend	2-1-2014	340-071-0335	1-2-2014	Amend	2-1-2014

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340-071-0345	1-2-2014	Amend	2-1-2014	340-253-3000	1-1-2014	Amend(T)	2-1-2014
340-071-0360	1-2-2014	Amend	2-1-2014	340-253-3000	6-26-2014	Repeal	8-1-2014
340-071-0400	1-2-2014	Amend	2-1-2014	340-253-3010	1-1-2014	Amend(T)	2-1-2014
340-071-0415	1-2-2014	Amend	2-1-2014	340-253-3010	6-26-2014	Amend	8-1-2014
340-071-0420	1-2-2014	Amend	2-1-2014	340-253-3020	1-1-2014	Amend(T)	2-1-2014
340-071-0425	1-2-2014	Amend	2-1-2014	340-253-3020	6-26-2014	Amend	8-1-2014
340-071-0435	1-2-2014	Amend	2-1-2014	340-257-0010	12-19-2013	Amend	2-1-2014
340-071-0445	1-2-2014	Amend	2-1-2014	340-257-0020	12-19-2013	Amend	2-1-2014
340-071-0520	1-2-2014	Amend	2-1-2014	340-257-0030	12-19-2013	Amend	2-1-2014
340-071-0600	1-2-2014	Amend	2-1-2014	340-257-0050	12-19-2013	Amend	2-1-2014
340-071-0650	1-2-2014	Amend	2-1-2014	340-257-0070	12-19-2013	Amend	2-1-2014
340-200-0040	12-19-2013	Amend	2-1-2014	340-257-0080	12-19-2013	Amend	2-1-2014
340-200-0040	1-6-2014	Amend	2-1-2014	340-257-0090	12-19-2013	Amend	2-1-2014
340-200-0040	3-31-2014	Amend	5-1-2014	340-257-0100	12-19-2013	Amend	2-1-2014
340-200-0040	3-31-2014	Amend	5-1-2014	340-257-0110	12-19-2013	Amend	2-1-2014
340-200-0040	3-31-2014	Amend	5-1-2014	340-257-0120	12-19-2013	Amend	2-1-2014
340-200-0040	6-26-2014	Amend	8-1-2014	340-259-0010	3-31-2014	Amend	5-1-2014
340-210-0100	6-26-2014	Amend	8-1-2014	407-025-0010	2-14-2014	Adopt	3-1-2014
340-216-0020	6-26-2014	Amend	8-1-2014	407-025-0050	2-14-2014	Adopt	3-1-2014
340-216-0025	6-26-2014	Amend	8-1-2014	409-022-0050	2-24-2014	Amend	4-1-2014
340-216-0040	6-26-2014	Amend	8-1-2014	409-023-0000	1-1-2014	Am. & Ren.	2-1-2014
340-216-0052	6-26-2014	Amend	8-1-2014	409-023-0005	1-1-2014	Am. & Ren.	2-1-2014
340-216-0054	6-26-2014	Amend	8-1-2014	409-023-0010	1-1-2014	Am. & Ren.	2-1-2014
340-216-0056	6-26-2014	Amend	8-1-2014	409-023-0012	1-1-2014	Am. & Ren.	2-1-2014
340-216-0060	6-26-2014	Amend	8-1-2014	409-023-0013	1-1-2014	Am. & Ren.	2-1-2014
340-216-0062	6-26-2014	Amend	8-1-2014	409-023-0015	1-1-2014	Am. & Ren.	2-1-2014
340-216-0064	6-26-2014	Amend	8-1-2014	409-023-0020	1-1-2014	Am. & Ren.	2-1-2014
340-216-0066	6-26-2014	Amend	8-1-2014	409-023-0025	1-1-2014	Am. & Ren.	2-1-2014
340-216-0070	6-26-2014	Amend	8-1-2014	409-023-0030	1-1-2014	Am. & Ren.	2-1-2014
340-216-0090	6-26-2014	Amend	8-1-2014	409-023-0035	1-1-2014	Am. & Ren.	2-1-2014
340-216-8010	6-26-2014	Adopt	8-1-2014	409-045-0000	7-1-2014	Repeal	8-1-2014
340-216-8020	6-26-2014	Adopt	8-1-2014	409-045-0025	7-1-2014	Adopt	8-1-2014
340-253-0040	1-1-2014	Amend(T)	2-1-2014	409-045-0030	7-1-2014	Adopt	8-1-2014
340-253-0040	6-26-2014	Amend	8-1-2014	409-045-0035	7-1-2014	Adopt	8-1-2014
340-253-0060	1-1-2014	Amend(T)	2-1-2014	409-045-0040	7-1-2014	Adopt	8-1-2014
340-253-0060	6-26-2014	Amend	8-1-2014	409-045-0045	7-1-2014	Adopt	8-1-2014
340-253-0100	1-1-2014	Amend(T)	2-1-2014	409-045-0050	7-1-2014	Adopt	8-1-2014
340-253-0100	6-26-2014	Amend	8-1-2014	409-045-0055	7-1-2014	Adopt	8-1-2014
340-253-0250	1-1-2014	Amend(T)	2-1-2014	409-045-0060	7-1-2014	Adopt	8-1-2014
340-253-0250	6-26-2014	Amend	8-1-2014	409-045-0065	7-1-2014	Adopt	8-1-2014
340-253-0310	1-1-2014	Amend(T)	2-1-2014	409-045-0070	7-1-2014	Adopt	8-1-2014
340-253-0310	6-26-2014	Amend	8-1-2014	409-045-0075	7-1-2014	Adopt	8-1-2014
340-253-0320	1-1-2014	Amend(T)	2-1-2014	409-045-0105	1-1-2014	Adopt(T)	2-1-2014
340-253-0320	6-26-2014	Amend	8-1-2014	409-045-0105(T)	7-1-2014	Repeal	8-1-2014
340-253-0340	1-1-2014	Amend(T)	2-1-2014	409-045-0110	1-1-2014	Adopt(T)	2-1-2014
340-253-0340	6-26-2014	Amend	8-1-2014	409-045-0110(T)	7-1-2014	Repeal	8-1-2014
340-253-0400	1-1-2014	Amend(T)	2-1-2014	409-045-0115	1-1-2014	Adopt(T)	2-1-2014
340-253-0400	6-26-2014	Amend	8-1-2014	409-045-0115	7-1-2014	Amend	8-1-2014
340-253-0500	1-1-2014	Amend(T)	2-1-2014	409-045-0120	1-1-2014	Adopt(T)	2-1-2014
340-253-0500	6-26-2014	Amend	8-1-2014	409-045-0120	7-1-2014	Amend	8-1-2014
340-253-0600	1-1-2014	Amend(T)	2-1-2014	409-045-0125	1-1-2014	Adopt(T)	2-1-2014
340-253-0600	6-26-2014	Amend	8-1-2014	409-045-0125	7-1-2014	Amend	8-1-2014
340-253-0630	1-1-2014	Amend(T)	2-1-2014	409-045-0130	1-1-2014	Adopt(T)	2-1-2014
340-253-0630	6-26-2014	Amend	8-1-2014	409-045-0130	7-1-2014	Amend	8-1-2014
340-253-0650	1-1-2014	Amend(T)	2-1-2014	409-045-0135	1-1-2014	Adopt(T)	2-1-2014

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409-110-0000	2-24-2014	Repeal	4-1-2014	410-121-0030	1-10-2014	Amend(T)	2-1-2014
409-110-0005	2-24-2014	Repeal	4-1-2014	410-121-0030	3-21-2014	Amend(T)	5-1-2014
409-110-0010	2-24-2014	Repeal	4-1-2014	410-121-0030	5-2-2014	Amend(T)	6-1-2014
409-110-0015	2-24-2014	Repeal	4-1-2014	410-121-0030	6-30-2014	Amend	8-1-2014
409-110-0020	2-24-2014	Repeal	4-1-2014	410-121-0030	7-15-2014	Amend(T)	8-1-2014
410-050-0100	4-1-2014	Repeal	5-1-2014	410-121-0030(T)	1-10-2014	Suspend	2-1-2014
410-050-0110	4-1-2014	Repeal	5-1-2014	410-121-0030(T)	6-30-2014	Repeal	8-1-2014
410-050-0120	4-1-2014	Repeal	5-1-2014	410-121-0040	1-1-2014	Amend(T)	2-1-2014
410-050-0130	4-1-2014	Repeal	5-1-2014	410-121-0040	3-21-2014	Amend(T)	5-1-2014
410-050-0140	4-1-2014	Repeal	5-1-2014	410-121-0040	5-2-2014	Amend(T)	6-1-2014
410-050-0150	4-1-2014	Repeal	5-1-2014	410-121-0040	6-30-2014	Amend	8-1-2014
410-050-0160	4-1-2014	Repeal	5-1-2014	410-121-0040	7-15-2014	Amend(T)	8-1-2014
410-050-0170	4-1-2014	Repeal	5-1-2014	410-121-0040(T)	6-30-2014	Repeal	8-1-2014
410-050-0180	4-1-2014	Repeal	5-1-2014	410-121-0111	1-28-2014	Amend	3-1-2014
410-050-0190	4-1-2014	Repeal	5-1-2014	410-121-4005	11-19-2013	Amend	1-1-2014
410-050-0200	4-1-2014	Repeal	5-1-2014	410-121-4010	11-19-2013	Amend	1-1-2014
410-050-0210	4-1-2014	Repeal	5-1-2014	410-121-4020	11-19-2013	Amend	1-1-2014
410-050-0220	4-1-2014	Repeal	5-1-2014	410-122-0055	1-1-2014	Suspend	2-1-2014
410-050-0230	4-1-2014	Repeal	5-1-2014	410-122-0055	4-4-2014	Repeal	5-1-2014
410-050-0240	4-1-2014	Repeal	5-1-2014	410-122-0186	2-1-2014	Amend(T)	2-1-2014
410-050-0250	4-1-2014	Repeal	5-1-2014	410-122-0186	7-11-2014	Amend	8-1-2014
410-050-0870	3-25-2014	Amend	5-1-2014	410-122-0186(T)	7-11-2014	Repeal	8-1-2014
410-050-0870(T)	3-25-2014	Repeal	5-1-2014	410-123-1060	1-1-2014	Amend(T)	2-1-2014
410-120-0000	12-27-2013	Amend	2-1-2014	410-123-1060	6-27-2014	Amend	8-1-2014
410-120-0000(T)	12-27-2013	Repeal	2-1-2014	410-123-1060(T)	6-27-2014	Repeal	8-1-2014
410-120-0003	1-1-2014	Adopt	2-1-2014	410-123-1200	1-1-2014	Amend(T)	2-1-2014
410-120-0006	2-1-2014	Amend(T)	3-1-2014	410-123-1200	4-1-2014	Amend(T)	5-1-2014
410-120-0006	3-31-2014	Amend	5-1-2014	410-123-1200	6-27-2014	Amend	8-1-2014
410-120-0006	7-1-2014	Amend	8-1-2014	410-123-1200(T)	4-1-2014	Suspend	5-1-2014
410-120-0006(T)	2-1-2014	Suspend	3-1-2014	410-123-1200(T)	6-27-2014	Repeal	8-1-2014
410-120-0006(T)	3-31-2014	Repeal	5-1-2014	410-123-1260	12-23-2013	Amend	1-1-2014
410-120-0030	12-3-2013	Amend	1-1-2014	410-123-1260	1-1-2014	Amend(T)	2-1-2014
410-120-0030	1-1-2014	Amend(T)	2-1-2014	410-123-1260	2-28-2014	Amend(T)	4-1-2014
410-120-0030	4-4-2014	Amend	5-1-2014	410-123-1260	4-1-2014	Amend(T)	5-1-2014
410-120-0030(T)	4-4-2014	Repeal	5-1-2014	410-123-1260	6-27-2014	Amend	8-1-2014
410-120-0045	12-27-2013	Amend	2-1-2014	410-123-1260(T)	4-1-2014	Suspend	5-1-2014
410-120-0045(T)	12-27-2013	Repeal	2-1-2014	410-123-1260(T)	6-27-2014	Repeal	8-1-2014
410-120-1140	7-3-2014	Amend	8-1-2014	410-123-1540	1-1-2014	Amend(T)	2-1-2014
410-120-1160	12-27-2013	Amend	2-1-2014	410-123-1540	6-27-2014	Amend	8-1-2014
410-120-1160(T)	12-27-2013	Repeal	2-1-2014	410-123-1540(T)	6-27-2014	Repeal	8-1-2014
410-120-1200	12-27-2013	Amend	2-1-2014	410-123-1670	1-1-2014	Suspend	2-1-2014
410-120-1200(T)	12-27-2013	Repeal	2-1-2014	410-123-1670	4-4-2014	Repeal	5-1-2014
410-120-1210	12-27-2013	Amend	2-1-2014	410-125-0020	1-1-2014	Amend(T)	2-1-2014
410-120-1210	1-1-2014	Amend(T)	2-1-2014	410-125-0020	4-4-2014	Amend	5-1-2014
410-120-1210	4-4-2014	Amend	5-1-2014	410-125-0020(T)	4-4-2014	Repeal	5-1-2014
410-120-1210(T)	12-27-2013	Repeal	2-1-2014	410-125-0047	1-1-2014	Suspend	2-1-2014
410-120-1210(T)	4-4-2014	Repeal	5-1-2014	410-125-0047	4-4-2014	Repeal	5-1-2014
410-120-1230	1-1-2014	Amend(T)	2-1-2014	410-125-0080	1-1-2014	Amend(T)	2-1-2014
410-120-1230	4-4-2014	Amend	5-1-2014	410-125-0080	4-4-2014	Amend	5-1-2014
410-120-1230(T)	4-4-2014	Repeal	5-1-2014	410-125-0080(T)	4-4-2014	Repeal	5-1-2014
410-120-1340	12-30-2013	Amend(T)	2-1-2014	410-125-0085	1-1-2014	Amend(T)	2-1-2014
410-120-1340	4-4-2014	Amend	5-1-2014	410-125-0085	4-4-2014	Amend	5-1-2014
410-120-1340(T)	4-4-2014	Repeal	5-1-2014	410-125-0085(T)	4-4-2014	Repeal	5-1-2014
410-120-1855	12-27-2013	Amend	2-1-2014	410-127-0050	1-1-2014	Suspend	2-1-2014
410-120-1855(T)	12-27-2013	Repeal	2-1-2014	410-127-0055	4-4-2014	Repeal	5-1-2014

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410-129-0065	4-2-2014	Amend	5-1-2014	410-140-0210	5-8-2014	Repeal	6-1-2014
410-129-0070	4-2-2014	Amend	5-1-2014	410-140-0220	5-8-2014	Repeal	6-1-2014
410-129-0195	1-1-2014	Suspend	2-1-2014	410-140-0240	5-8-2014	Repeal	6-1-2014
410-129-0195	4-4-2014	Repeal	5-1-2014	410-140-0260	5-8-2014	Amend	6-1-2014
410-130-0015	1-1-2014	Adopt	2-1-2014	410-140-0280	5-8-2014	Amend	6-1-2014
410-130-0163	1-1-2014	Suspend	2-1-2014	410-140-0300	5-8-2014	Amend	6-1-2014
410-130-0163	4-4-2014	Repeal	5-1-2014	410-140-0320	5-8-2014	Repeal	6-1-2014
410-130-0200	7-8-2014	Amend	8-1-2014	410-140-0380	5-8-2014	Repeal	6-1-2014
410-130-0240	1-1-2014	Amend(T)	2-1-2014	410-140-0400	5-8-2014	Amend	6-1-2014
410-130-0240	4-4-2014	Amend	5-1-2014	410-141-0000	8-1-2014	Amend	8-1-2014
410-130-0240(T)	4-4-2014	Repeal	5-1-2014	410-141-0050	8-1-2014	Amend	8-1-2014
410-130-0255	3-13-2014	Amend	4-1-2014	410-141-0065	1-31-2014	Adopt	3-1-2014
410-131-0120	1-1-2014	Amend(T)	2-1-2014	410-141-0080	2-1-2014	Amend(T)	3-1-2014
410-131-0120	4-4-2014	Amend	5-1-2014	410-141-0080	6-1-2014	Amend	7-1-2014
410-131-0120(T)	4-4-2014	Repeal	5-1-2014	410-141-0080(T)	6-1-2014	Repeal	7-1-2014
410-132-0055	1-1-2014	Suspend	2-1-2014	410-141-0120	8-1-2014	Amend	8-1-2014
410-132-0055	4-4-2014	Repeal	5-1-2014	410-141-0180	8-1-2014	Amend	8-1-2014
410-136-3000	1-1-2014	Amend(T)	2-1-2014	410-141-0263	7-1-2014	Amend	7-1-2014
410-136-3000	5-20-2014	Amend	7-1-2014	410-141-0270	8-1-2014	Amend	8-1-2014
410-136-3000(T)	5-20-2014	Repeal	7-1-2014	410-141-0410	8-1-2014	Amend	8-1-2014
410-136-3010	7-1-2014	Adopt	8-1-2014	410-141-0420	7-1-2014	Amend(T)	8-1-2014
410-136-3020	1-1-2014	Amend(T)	2-1-2014	410-141-0420	8-1-2014	Amend	8-1-2014
410-136-3020	5-20-2014	Amend	7-1-2014	410-141-0480	8-1-2014	Amend	8-1-2014
410-136-3020(T)	5-20-2014	Repeal	7-1-2014	410-141-0520	1-31-2014	Amend	3-1-2014
410-136-3060	1-1-2014	Amend(T)	2-1-2014	410-141-0520	4-1-2014	Amend(T)	5-1-2014
410-136-3060	5-20-2014	Amend	7-1-2014	410-141-0520	7-1-2014	Amend	7-1-2014
410-136-3060(T)	5-20-2014	Repeal	7-1-2014	410-141-0520(T)	7-1-2014	Repeal	7-1-2014
410-136-3140	1-1-2014	Amend(T)	2-1-2014	410-141-0740	8-1-2014	Amend	8-1-2014
410-136-3140	5-20-2014	Amend	7-1-2014	410-141-0860	1-1-2014	Amend(T)	2-1-2014
410-136-3140(T)	5-20-2014	Repeal	7-1-2014	410-141-0860	4-4-2014	Amend	5-1-2014
410-136-3220	1-1-2014	Amend(T)	2-1-2014	410-141-0860(T)	4-4-2014	Repeal	5-1-2014
410-136-3220	5-20-2014	Amend	7-1-2014	410-141-3010	8-1-2014	Amend	8-1-2014
410-136-3220(T)	5-20-2014	Repeal	7-1-2014	410-141-3015	8-1-2014	Amend	8-1-2014
410-136-3240	1-1-2014	Amend(T)	2-1-2014	410-141-3050	8-1-2014	Amend	8-1-2014
410-136-3240	5-20-2014	Amend	7-1-2014	410-141-3060	11-29-2013	Amend	1-1-2014
410-136-3240(T)	5-20-2014	Repeal	7-1-2014	410-141-3060	7-1-2014	Amend(T)	8-1-2014
410-136-3260	3-11-2014	Amend	4-1-2014	410-141-3065	1-31-2014	Adopt	3-1-2014
410-136-3260(T)	3-11-2014	Repeal	4-1-2014	410-141-3070	4-1-2014	Amend(T)	5-1-2014
410-138-0000	1-1-2014	Amend(T)	2-1-2014	410-141-3070	7-1-2014	Amend	7-1-2014
410-138-0000	4-4-2014	Amend	5-1-2014	410-141-3070(T)	7-1-2014	Repeal	7-1-2014
410-138-0007	1-1-2014	Amend(T)	2-1-2014	410-141-3080	11-29-2013	Amend	1-1-2014
410-138-0007	4-4-2014	Amend	5-1-2014	410-141-3080	2-1-2014	Amend(T)	3-1-2014
410-138-0007(T)	4-4-2014	Repeal	5-1-2014	410-141-3080	6-1-2014	Amend	7-1-2014
410-138-0009	1-1-2014	Amend(T)	2-1-2014	410-141-3080(T)	6-1-2014	Repeal	7-1-2014
410-138-0009	4-4-2014	Amend	5-1-2014	410-141-3120	8-1-2014	Amend	8-1-2014
410-138-0009(T)	4-4-2014	Repeal	5-1-2014	410-141-3145	8-1-2014	Amend	8-1-2014
410-140-0020	5-8-2014	Amend	6-1-2014	410-141-3200	8-1-2014	Amend	8-1-2014
410-140-0040	5-8-2014	Amend	6-1-2014	410-141-3220	11-29-2013	Amend	1-1-2014
410-140-0050	5-8-2014	Amend	6-1-2014	410-141-3260	7-1-2014	Amend	7-1-2014
410-140-0060	5-8-2014	Repeal	6-1-2014	410-141-3268	1-1-2014	Amend(T)	2-1-2014
410-140-0110	5-8-2014	Repeal	6-1-2014	410-141-3270	8-1-2014	Amend	8-1-2014
410-140-0120	5-8-2014	Amend	6-1-2014	410-141-3420	11-29-2013	Amend	1-1-2014
410-140-0140	5-8-2014	Amend	6-1-2014	410-141-3420	7-1-2014	Amend(T)	8-1-2014
410-140-0160	5-8-2014	Amend	6-1-2014	410-141-3435	7-1-2014	Adopt	8-1-2014
410-140-0180	5-8-2014	Repeal	6-1-2014	410-141-3440	7-1-2014	Adopt	8-1-2014

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410-141-3450	7-1-2014	Adopt	8-1-2014	410-200-0015(T)	1-15-2014	Suspend	2-1-2014
410-141-3455	7-1-2014	Adopt	8-1-2014	410-200-0015(T)	3-28-2014	Repeal	5-1-2014
410-141-3460	7-1-2014	Adopt	8-1-2014	410-200-0100	1-15-2014	Adopt(T)	2-1-2014
410-141-3465	7-1-2014	Adopt	8-1-2014	410-200-0100	3-28-2014	Adopt	5-1-2014
410-141-3470	7-1-2014	Adopt	8-1-2014	410-200-0100(T)	1-15-2014	Suspend	2-1-2014
410-141-3475	7-1-2014	Adopt	8-1-2014	410-200-0100(T)	3-28-2014	Repeal	5-1-2014
410-141-3480	7-1-2014	Adopt	8-1-2014	410-200-0105	1-15-2014	Adopt(T)	2-1-2014
410-141-3485	7-1-2014	Adopt	8-1-2014	410-200-0105	3-28-2014	Adopt	5-1-2014
410-142-0040	1-1-2014	Amend(T)	2-1-2014	410-200-0105(T)	1-15-2014	Suspend	2-1-2014
410-142-0040	4-4-2014	Amend	5-1-2014	410-200-0105(T)	3-28-2014	Repeal	5-1-2014
410-142-0040(T)	4-4-2014	Repeal	5-1-2014	410-200-0110	1-15-2014	Adopt(T)	2-1-2014
410-146-0022	1-1-2014	Suspend	2-1-2014	410-200-0110	3-28-2014	Adopt	5-1-2014
410-146-0022	4-4-2014	Repeal	5-1-2014	410-200-0110(T)	1-15-2014	Suspend	2-1-2014
410-146-0380	1-1-2014	Suspend	2-1-2014	410-200-0110(T)	3-28-2014	Repeal	5-1-2014
410-146-0380	4-4-2014	Repeal	5-1-2014	410-200-0111	1-15-2014	Adopt(T)	2-1-2014
410-147-0125	1-1-2014	Suspend	2-1-2014	410-200-0111	3-28-2014	Adopt	5-1-2014
410-147-0125	4-4-2014	Repeal	5-1-2014	410-200-0111(T)	1-15-2014	Suspend	2-1-2014
410-148-0090	1-1-2014	Suspend	2-1-2014	410-200-0111(T)	3-28-2014	Repeal	5-1-2014
410-148-0090	4-4-2014	Repeal	5-1-2014	410-200-0115	1-15-2014	Adopt(T)	2-1-2014
410-180-0300	12-3-2013	Adopt	1-1-2014	410-200-0115	3-28-2014	Adopt	5-1-2014
410-180-0300(T)	12-3-2013	Repeal	1-1-2014	410-200-0115(T)	1-15-2014	Suspend	2-1-2014
410-180-0305	12-3-2013	Adopt	1-1-2014	410-200-0115(T)	3-28-2014	Repeal	5-1-2014
410-180-0305(T)	12-3-2013	Repeal	1-1-2014	410-200-0120	1-15-2014	Adopt(T)	2-1-2014
410-180-0310	12-3-2013	Adopt	1-1-2014	410-200-0120	3-28-2014	Adopt	5-1-2014
410-180-0310(T)	12-3-2013	Repeal	1-1-2014	410-200-0120(T)	1-15-2014	Suspend	2-1-2014
410-180-0312	12-3-2013	Adopt	1-1-2014	410-200-0120(T)	3-28-2014	Repeal	5-1-2014
410-180-0315	12-3-2013	Adopt	1-1-2014	410-200-0125	1-15-2014	Adopt(T)	2-1-2014
410-180-0315(T)	12-3-2013	Repeal	1-1-2014	410-200-0125	3-28-2014	Adopt	5-1-2014
410-180-0320	12-3-2013	Adopt	1-1-2014	410-200-0125(T)	1-15-2014	Suspend	2-1-2014
410-180-0320(T)	12-3-2013	Repeal	1-1-2014	410-200-0125(T)	3-28-2014	Repeal	5-1-2014
410-180-0325	1-15-2014	Adopt	2-1-2014	410-200-0130	1-15-2014	Adopt(T)	2-1-2014
410-180-0325(T)	1-15-2014	Repeal	2-1-2014	410-200-0130	3-28-2014	Adopt	5-1-2014
410-180-0326	1-15-2014	Adopt	2-1-2014	410-200-0130(T)	1-15-2014	Suspend	2-1-2014
410-180-0327	12-3-2013	Adopt	1-1-2014	410-200-0130(T)	3-28-2014	Repeal	5-1-2014
410-180-0327(T)	12-3-2013	Repeal	1-1-2014	410-200-0135	1-15-2014	Adopt(T)	2-1-2014
410-180-0340	12-3-2013	Adopt	1-1-2014	410-200-0135	3-28-2014	Adopt	5-1-2014
410-180-0340(T)	12-3-2013	Repeal	1-1-2014	410-200-0135(T)	1-15-2014	Suspend	2-1-2014
410-180-0345	12-3-2013	Adopt	1-1-2014	410-200-0135(T)	3-28-2014	Repeal	5-1-2014
410-180-0345(T)	12-3-2013	Repeal	1-1-2014	410-200-0140	1-15-2014	Adopt(T)	2-1-2014
410-180-0350	12-3-2013	Adopt	1-1-2014	410-200-0140	3-28-2014	Adopt	5-1-2014
410-180-0350(T)	12-3-2013	Repeal	1-1-2014	410-200-0140(T)	1-15-2014	Suspend	2-1-2014
410-180-0355	12-3-2013	Adopt	1-1-2014	410-200-0140(T)	3-28-2014	Repeal	5-1-2014
410-180-0355(T)	12-3-2013	Repeal	1-1-2014	410-200-0145	1-15-2014	Adopt(T)	2-1-2014
410-180-0360	12-3-2013	Adopt	1-1-2014	410-200-0145	3-28-2014	Adopt	5-1-2014
410-180-0370	12-3-2013	Adopt	1-1-2014	410-200-0145(T)	1-15-2014	Suspend	2-1-2014
410-180-0370(T)	12-3-2013	Repeal	1-1-2014	410-200-0145(T)	3-28-2014	Repeal	5-1-2014
410-180-0375	12-3-2013	Adopt	1-1-2014	410-200-0146	1-15-2014	Adopt(T)	2-1-2014
410-180-0375(T)	12-3-2013	Repeal	1-1-2014	410-200-0146	3-28-2014	Adopt	5-1-2014
410-180-0380	12-3-2013	Adopt	1-1-2014	410-200-0146(T)	1-15-2014	Suspend	2-1-2014
410-180-0380(T)	12-3-2013	Repeal	1-1-2014	410-200-0146(T)	3-28-2014	Repeal	5-1-2014
410-200-0010	1-15-2014	Adopt(T)	2-1-2014	410-200-0200	1-15-2014	Adopt(T)	2-1-2014
410-200-0010	3-28-2014	Adopt	5-1-2014	410-200-0200	3-28-2014	Adopt	5-1-2014
410-200-0010(T)	1-15-2014	Suspend	2-1-2014	410-200-0200(T)	1-15-2014	Suspend	2-1-2014
410-200-0010(T)	3-28-2014	Repeal	5-1-2014	410-200-0200(T)	3-28-2014	Repeal	5-1-2014
410-200-0015	1-15-2014	Adopt(T)	2-1-2014	410-200-0205	1-15-2014	Adopt(T)	2-1-2014

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410-200-0205(T)	1-15-2014	Suspend	2-1-2014	410-200-0410(T)	3-28-2014	Repeal	5-1-2014
410-200-0205(T)	3-28-2014	Repeal	5-1-2014	410-200-0415	1-15-2014	Adopt(T)	2-1-2014
410-200-0210	1-15-2014	Adopt(T)	2-1-2014	410-200-0415	3-28-2014	Adopt	5-1-2014
410-200-0210	3-28-2014	Adopt	5-1-2014	410-200-0415(T)	1-15-2014	Suspend	2-1-2014
410-200-0210(T)	1-15-2014	Suspend	2-1-2014	410-200-0415(T)	3-28-2014	Repeal	5-1-2014
410-200-0210(T)	3-28-2014	Repeal	5-1-2014	410-200-0420	1-15-2014	Adopt(T)	2-1-2014
410-200-0215	1-15-2014	Adopt(T)	2-1-2014	410-200-0420	3-28-2014	Adopt	5-1-2014
410-200-0215	3-28-2014	Adopt	5-1-2014	410-200-0420(T)	1-15-2014	Suspend	2-1-2014
410-200-0215(T)	1-15-2014	Suspend	2-1-2014	410-200-0420(T)	3-28-2014	Repeal	5-1-2014
410-200-0215(T)	3-28-2014	Repeal	5-1-2014	410-200-0425	1-15-2014	Adopt(T)	2-1-2014
410-200-0220	1-15-2014	Adopt(T)	2-1-2014	410-200-0425	3-28-2014	Adopt	5-1-2014
410-200-0220	3-28-2014	Adopt	5-1-2014	410-200-0425(T)	1-15-2014	Suspend	2-1-2014
410-200-0220(T)	1-15-2014	Suspend	2-1-2014	410-200-0425(T)	3-28-2014	Repeal	5-1-2014
410-200-0220(T)	3-28-2014	Repeal	5-1-2014	410-200-0435	1-15-2014	Adopt(T)	2-1-2014
410-200-0225	1-15-2014	Adopt(T)	2-1-2014	410-200-0435	3-28-2014	Adopt	5-1-2014
410-200-0225	3-28-2014	Adopt	5-1-2014	410-200-0435(T)	1-15-2014	Suspend	2-1-2014
410-200-0225(T)	1-15-2014	Suspend	2-1-2014	410-200-0435(T)	3-28-2014	Repeal	5-1-2014
410-200-0225(T)	3-28-2014	Repeal	5-1-2014	410-200-0440	1-15-2014	Adopt(T)	2-1-2014
410-200-0230	1-15-2014	Adopt(T)	2-1-2014	410-200-0440	3-28-2014	Adopt	5-1-2014
410-200-0230	3-28-2014	Adopt	5-1-2014	410-200-0440(T)	1-15-2014	Suspend	2-1-2014
410-200-0230(T)	1-15-2014	Suspend	2-1-2014	410-200-0440(T)	3-28-2014	Repeal	5-1-2014
410-200-0230(T)	3-28-2014	Repeal	5-1-2014	410-200-0500	1-15-2014	Adopt(T)	2-1-2014
410-200-0235	1-15-2014	Adopt(T)	2-1-2014	410-200-0500	3-28-2014	Adopt	5-1-2014
410-200-0235	3-28-2014	Adopt	5-1-2014	410-200-0500(T)	1-15-2014	Suspend	2-1-2014
410-200-0235(T)	1-15-2014	Suspend	2-1-2014	410-200-0500(T)	3-28-2014	Repeal	5-1-2014
410-200-0235(T)	3-28-2014	Repeal	5-1-2014	410-200-0505	1-15-2014	Adopt(T)	2-1-2014
410-200-0240	1-15-2014	Adopt(T)	2-1-2014	410-200-0505	3-28-2014	Adopt	5-1-2014
410-200-0240	3-28-2014	Adopt	5-1-2014	410-200-0505(T)	1-15-2014	Suspend	2-1-2014
410-200-0240(T)	1-15-2014	Suspend	2-1-2014	410-200-0505(T)	3-28-2014	Repeal	5-1-2014
410-200-0240(T)	3-28-2014	Repeal	5-1-2014	410-200-0510	1-15-2014	Adopt(T)	2-1-2014
410-200-0305	1-15-2014	Adopt(T)	2-1-2014	410-200-0510	3-28-2014	Adopt	5-1-2014
410-200-0305	3-28-2014	Adopt	5-1-2014	410-200-0510(T)	1-15-2014	Suspend	2-1-2014
410-200-0305(T)	1-15-2014	Suspend	2-1-2014	410-200-0510(T)	3-28-2014	Repeal	5-1-2014
410-200-0305(T)	3-28-2014	Repeal	5-1-2014	410-200-0515(T)	1-15-2014	Suspend	2-1-2014
410-200-0310	1-15-2014	Adopt(T)	2-1-2014	410-200-0515(T)	3-28-2014	Repeal	5-1-2014
410-200-0310	3-28-2014	Adopt	5-1-2014	411-001-0100	1-1-2014	Amend	2-1-2014
410-200-0310(T)	1-15-2014	Suspend	2-1-2014	411-001-0110	1-1-2014	Amend	2-1-2014
410-200-0310(T)	3-28-2014	Repeal	5-1-2014	411-001-0118	1-1-2014	Amend	2-1-2014
410-200-0315	1-15-2014	Adopt(T)	2-1-2014	411-001-0120	1-1-2014	Amend	2-1-2014
410-200-0315	3-28-2014	Adopt	5-1-2014	411-001-0120	5-9-2014	Amend(T)	6-1-2014
410-200-0315	4-14-2014	Amend(T)	5-1-2014	411-001-0510	12-15-2013	Amend	1-1-2014
410-200-0315(T)	1-15-2014	Suspend	2-1-2014	411-001-0510	6-4-2014	Amend	7-1-2014
410-200-0315(T)	3-28-2014	Repeal	5-1-2014	411-001-0510(T)	12-15-2013	Repeal	1-1-2014
410-200-0400	1-15-2014	Adopt(T)	2-1-2014	411-015-0005	12-15-2013	Amend	1-1-2014
410-200-0400	3-28-2014	Adopt	5-1-2014	411-015-0005	4-21-2014	Amend(T)	6-1-2014
410-200-0400(T)	1-15-2014	Suspend	2-1-2014	411-015-0005(T)	12-15-2013	Repeal	1-1-2014
410-200-0400(T)	3-28-2014	Repeal	5-1-2014	411-015-0006	4-21-2014	Amend(T)	6-1-2014
410-200-0405	1-15-2014	Adopt(T)	2-1-2014	411-015-0008	12-15-2013	Amend	1-1-2014
410-200-0405	3-28-2014	Adopt	5-1-2014	411-015-0008(T)	12-15-2013	Repeal	1-1-2014
410-200-0405(T)	1-15-2014	Suspend	2-1-2014	411-015-0015	12-15-2013	Amend	1-1-2014
410-200-0405(T)	3-28-2014	Repeal	5-1-2014	411-015-0015	4-21-2014	Amend(T)	6-1-2014
410-200-0406(T)	1-15-2014	Suspend	2-1-2014	411-015-0015(T)	12-15-2013	Repeal	1-1-2014
410-200-0406(T)	3-28-2014	Repeal	5-1-2014	411-015-0100	12-15-2013	Amend	1-1-2014
410-200-0410	1-15-2014	Adopt(T)	2-1-2014	411-015-0100	4-21-2014	Amend(T)	6-1-2014
410-200-0410	3-28-2014	Adopt	5-1-2014	411-015-0100(T)	12-15-2013	Repeal	1-1-2014

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411-027-0020	3-20-2014	Amend(T)	5-1-2014	411-035-0015	6-4-2014	Adopt	7-1-2014
411-027-0025	3-20-2014	Amend(T)	5-1-2014	411-035-0020	6-4-2014	Adopt	7-1-2014
411-028-0000	12-15-2013	Adopt	1-1-2014	411-035-0025	6-4-2014	Adopt	7-1-2014
411-028-0000(T)	12-15-2013	Repeal	1-1-2014	411-035-0030	6-4-2014	Adopt	7-1-2014
411-028-0010	12-15-2013	Adopt	1-1-2014	411-035-0035	6-4-2014	Adopt	7-1-2014
411-028-0010	4-21-2014	Amend(T)	6-1-2014	411-035-0040	6-4-2014	Adopt	7-1-2014
411-028-0010(T)	12-15-2013	Repeal	1-1-2014	411-035-0045	6-4-2014	Adopt	7-1-2014
411-028-0020	12-15-2013	Adopt	1-1-2014	411-035-0050	6-4-2014	Adopt	7-1-2014
411-028-0020	4-21-2014	Amend(T)	6-1-2014	411-035-0055	6-4-2014	Adopt	7-1-2014
411-028-0020(T)	12-15-2013	Repeal	1-1-2014	411-035-0060	6-4-2014	Adopt	7-1-2014
411-028-0030	12-15-2013	Adopt	1-1-2014	411-035-0065	6-4-2014	Adopt	7-1-2014
411-028-0030	4-21-2014	Amend(T)	6-1-2014	411-035-0070	6-4-2014	Adopt	7-1-2014
411-028-0030(T)	12-15-2013	Repeal	1-1-2014	411-035-0075	6-4-2014	Adopt	7-1-2014
411-028-0040	12-15-2013	Adopt	1-1-2014	411-035-0080	6-4-2014	Adopt	7-1-2014
411-028-0040(T)	12-15-2013	Repeal	1-1-2014	411-035-0085	6-4-2014	Adopt	7-1-2014
411-028-0050	12-15-2013	Adopt	1-1-2014	411-035-0090	6-4-2014	Adopt	7-1-2014
411-028-0050(T)	12-15-2013	Repeal	1-1-2014	411-035-0095	6-4-2014	Adopt	7-1-2014
411-030-0020	4-21-2014	Amend(T)	6-1-2014	411-040-0000	12-15-2013	Amend	1-1-2014
411-030-0040	4-21-2014	Amend(T)	6-1-2014	411-040-0000	6-4-2014	Amend	7-1-2014
411-030-0070	12-15-2013	Amend	1-1-2014	411-040-0000(T)	12-15-2013	Repeal	1-1-2014
411-030-0070	5-1-2014	Amend	6-1-2014	411-040-0010	6-4-2014	Adopt	7-1-2014
411-030-0070(T)	12-15-2013	Repeal	1-1-2014	411-040-0020	6-4-2014	Adopt	7-1-2014
411-030-0100	12-15-2013	Amend	1-1-2014	411-040-0030	6-4-2014	Adopt	7-1-2014
411-030-0100(T)	12-15-2013	Repeal	1-1-2014	411-040-0035	6-4-2014	Adopt	7-1-2014
411-031-0020	12-15-2013	Amend	1-1-2014	411-040-0036	6-4-2014	Adopt	7-1-2014
411-031-0020(T)	12-15-2013	Repeal	1-1-2014	411-040-0037	6-4-2014	Adopt	7-1-2014
411-031-0040	12-15-2013	Amend	1-1-2014	411-040-0040	6-4-2014	Adopt	7-1-2014
411-031-0040(T)	12-15-2013	Repeal	1-1-2014	411-040-0050	6-4-2014	Adopt	7-1-2014
411-031-0050	12-15-2013	Amend	1-1-2014	411-040-0060	6-4-2014	Adopt	7-1-2014
411-032-0050	7-1-2014	Adopt(T)	8-1-2014	411-045-0010	12-15-2013	Amend	1-1-2014
411-034-0000	12-15-2013	Amend	1-1-2014	411-045-0010(T)	12-15-2013	Repeal	1-1-2014
411-034-0000(T)	12-15-2013	Repeal	1-1-2014	411-045-0050	12-15-2013	Amend	1-1-2014
411-034-0010	12-15-2013	Amend	1-1-2014	411-045-0050(T)	12-15-2013	Repeal	1-1-2014
411-034-0010	4-21-2014	Amend(T)	6-1-2014	411-046-0100	6-23-2014	Adopt	8-1-2014
411-034-0010	5-1-2014	Amend(T)	6-1-2014	411-046-0110	6-23-2014	Adopt	8-1-2014
411-034-0010(T)	12-15-2013	Repeal	1-1-2014	411-046-0120	6-23-2014	Adopt	8-1-2014
411-034-0010(T)	5-1-2014	Suspend	6-1-2014	411-046-0130	6-23-2014	Adopt	8-1-2014
411-034-0020	12-15-2013	Amend	1-1-2014	411-046-0140	6-23-2014	Adopt	8-1-2014
411-034-0020(T)	12-15-2013	Repeal	1-1-2014	411-046-0150	6-23-2014	Adopt	8-1-2014
411-034-0030	12-15-2013	Amend	1-1-2014	411-046-0160	6-23-2014	Adopt	8-1-2014
411-034-0030	4-21-2014	Amend(T)	6-1-2014	411-046-0170	6-23-2014	Adopt	8-1-2014
411-034-0030(T)	12-15-2013	Repeal	1-1-2014	411-046-0180	6-23-2014	Adopt	8-1-2014
411-034-0035	12-15-2013	Amend	1-1-2014	411-046-0190	6-23-2014	Adopt	8-1-2014
411-034-0035(T)	12-15-2013	Repeal	1-1-2014	411-046-0200	6-23-2014	Adopt	8-1-2014
411-034-0040	12-15-2013	Amend	1-1-2014	411-046-0210	6-23-2014	Adopt	8-1-2014
411-034-0040(T)	12-15-2013	Repeal	1-1-2014	411-046-0220	6-23-2014	Adopt	8-1-2014
411-034-0050	12-15-2013	Amend	1-1-2014	411-048-0150	12-15-2013	Amend	1-1-2014
411-034-0050(T)	12-15-2013	Repeal	1-1-2014	411-048-0150(T)	12-15-2013	Repeal	1-1-2014
411-034-0055	12-15-2013	Amend	1-1-2014	411-048-0160	12-15-2013	Amend	1-1-2014
411-034-0055(T)	12-15-2013	Repeal	1-1-2014	411-048-0160	5-1-2014	Amend(T)	6-1-2014
411-034-0070	12-15-2013	Amend	1-1-2014	411-048-0160(T)	12-15-2013	Repeal	1-1-2014
411-034-0070(T)	12-15-2013	Repeal	1-1-2014	411-048-0170	12-15-2013	Amend	1-1-2014
411-034-0090	12-15-2013	Amend	1-1-2014	411-048-0170	5-1-2014	Amend(T)	6-1-2014
411-034-0090(T)	12-15-2013	Repeal	1-1-2014	411-048-0170(T)	12-15-2013	Repeal	1-1-2014
411-035-0000	6-4-2014	Adopt	7-1-2014	411-050-0602	4-1-2014	Amend	5-1-2014

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411-050-0625	4-1-2014	Amend	5-1-2014	411-070-0442	7-1-2014	Amend	8-1-2014
411-050-0630	4-1-2014	Amend	5-1-2014	411-070-0442(T)	4-1-2014	Repeal	4-1-2014
411-050-0640	4-1-2014	Amend	5-1-2014	411-070-0452	12-28-2013	Amend	2-1-2014
411-050-0640(T)	4-1-2014	Repeal	5-1-2014	411-070-0452	7-1-2014	Amend	8-1-2014
411-050-0642	4-1-2014	Amend	5-1-2014	411-070-0452(T)	12-28-2013	Repeal	2-1-2014
411-050-0645	4-1-2014	Amend	5-1-2014	411-085-0005	4-1-2014	Amend	5-1-2014
411-050-0650	4-1-2014	Amend	5-1-2014	411-085-0025	4-1-2014	Amend	5-1-2014
411-050-0660	4-1-2014	Amend	5-1-2014	411-085-0025(T)	4-1-2014	Repeal	5-1-2014
411-050-0685	4-1-2014	Amend	5-1-2014	411-085-0210	4-1-2014	Amend	5-1-2014
411-065-0000	12-15-2013	Amend	1-1-2014	411-085-0210(T)	4-1-2014	Repeal	5-1-2014
411-065-0000(T)	12-15-2013	Repeal	1-1-2014	411-086-0100	3-31-2014	Amend	5-1-2014
411-069-0000	4-1-2014	Amend	5-1-2014	411-086-0100(T)	3-31-2014	Repeal	5-1-2014
411-069-0000(T)	4-1-2014	Repeal	5-1-2014	411-088-0020	4-1-2014	Amend	5-1-2014
411-069-0010	4-1-2014	Amend	5-1-2014	411-088-0070	4-1-2014	Amend	5-1-2014
411-069-0010(T)	4-1-2014	Repeal	5-1-2014	411-088-0070(T)	4-1-2014	Repeal	5-1-2014
411-069-0020	4-1-2014	Amend	5-1-2014	411-088-0080	4-1-2014	Amend	5-1-2014
411-069-0020(T)	4-1-2014	Repeal	5-1-2014	411-089-0030	4-1-2014	Amend	5-1-2014
411-069-0030	4-1-2014	Amend	5-1-2014	411-200-0010	2-1-2014	Amend	3-1-2014
411-069-0030(T)	4-1-2014	Repeal	5-1-2014	411-200-0020	2-1-2014	Amend	3-1-2014
411-069-0040	4-1-2014	Amend	5-1-2014	411-200-0030	2-1-2014	Amend	3-1-2014
411-069-0040(T)	4-1-2014	Repeal	5-1-2014	411-200-0035	2-1-2014	Amend	3-1-2014
411-069-0050	4-1-2014	Amend	5-1-2014	411-200-0040	2-1-2014	Amend	3-1-2014
411-069-0050(T)	4-1-2014	Repeal	5-1-2014	411-300-0100	12-28-2013	Amend	2-1-2014
411-069-0060	4-1-2014	Amend	5-1-2014	411-300-0110	12-28-2013	Amend	2-1-2014
411-069-0060(T)	4-1-2014	Repeal	5-1-2014	411-300-0110(T)	12-28-2013	Repeal	2-1-2014
411-069-0070	4-1-2014	Amend	5-1-2014	411-300-0120	12-28-2013	Amend	2-1-2014
411-069-0070(T)	4-1-2014	Repeal	5-1-2014	411-300-0120(T)	12-28-2013	Repeal	2-1-2014
411-069-0080	4-1-2014	Amend	5-1-2014	411-300-0130	12-28-2013	Amend	2-1-2014
411-069-0080(T)	4-1-2014	Repeal	5-1-2014	411-300-0130(T)	12-28-2013	Repeal	2-1-2014
411-069-0090	4-1-2014	Amend	5-1-2014	411-300-0140	12-28-2013	Amend	2-1-2014
411-069-0090(T)	4-1-2014	Repeal	5-1-2014	411-300-0140(T)	12-28-2013	Repeal	2-1-2014
411-069-0100	4-1-2014	Amend	5-1-2014	411-300-0150	12-28-2013	Amend	2-1-2014
411-069-0100(T)	4-1-2014	Repeal	5-1-2014	411-300-0150(T)	12-28-2013	Repeal	2-1-2014
411-069-0110	4-1-2014	Amend	5-1-2014	411-300-0155	12-28-2013	Amend	2-1-2014
411-069-0110(T)	4-1-2014	Repeal	5-1-2014	411-300-0170	12-28-2013	Amend	2-1-2014
411-069-0120	4-1-2014	Amend	5-1-2014	411-300-0190	12-28-2013	Amend	2-1-2014
411-069-0120(T)	4-1-2014	Repeal	5-1-2014	411-300-0200	12-28-2013	Amend	2-1-2014
411-069-0130	4-1-2014	Amend	5-1-2014	411-300-0205	12-28-2013	Amend	2-1-2014
411-069-0130(T)	4-1-2014	Repeal	5-1-2014	411-300-0210	12-28-2013	Amend	2-1-2014
411-069-0140	4-1-2014	Amend	5-1-2014	411-300-0220	12-28-2013	Amend	2-1-2014
411-069-0140(T)	4-1-2014	Repeal	5-1-2014	411-308-0010	12-28-2013	Amend	2-1-2014
411-069-0150	4-1-2014	Amend	5-1-2014	411-308-0010(T)	12-28-2013	Repeal	2-1-2014
411-069-0150(T)	4-1-2014	Repeal	5-1-2014	411-308-0020	12-28-2013	Amend	2-1-2014
411-069-0160	4-1-2014	Amend	5-1-2014	411-308-0020	7-1-2014	Amend(T)	8-1-2014
411-069-0160(T)	4-1-2014	Repeal	5-1-2014	411-308-0020(T)	12-28-2013	Repeal	2-1-2014
411-069-0170	4-1-2014	Amend	5-1-2014	411-308-0030	12-28-2013	Amend	2-1-2014
411-069-0170(T)	4-1-2014	Repeal	5-1-2014	411-308-0030	7-1-2014	Amend(T)	8-1-2014
411-070-0005	4-1-2014	Amend	4-1-2014	411-308-0030(T)	12-28-2013	Repeal	2-1-2014
411-070-0005(T)	4-1-2014	Repeal	4-1-2014	411-308-0040	12-28-2013	Amend	2-1-2014
411-070-0033	12-15-2013	Amend	1-1-2014	411-308-0050	12-28-2013	Amend	2-1-2014
411-070-0033(T)	12-15-2013	Repeal	1-1-2014	411-308-0050	7-1-2014	Amend(T)	8-1-2014
411-070-0300	4-1-2014	Amend	4-1-2014	411-308-0050(T)	12-28-2013	Repeal	2-1-2014
411-070-0300(T)	4-1-2014	Repeal	4-1-2014	411-308-0060	12-28-2013	Amend	2-1-2014
411-070-0437	4-1-2014	Adopt	4-1-2014	411-308-0060	7-1-2014	Amend(T)	8-1-2014
411-070-0437(T)	4-1-2014	Repeal	4-1-2014	411-308-0060(T)	12-28-2013	Repeal	2-1-2014

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411-308-0070	12-28-2013	Amend	2-1-2014	411-320-0120(T)	12-28-2013	Repeal	2-1-2014
411-308-0070	7-1-2014	Amend(T)	8-1-2014	411-320-0130	12-28-2013	Amend	2-1-2014
411-308-0070(T)	12-28-2013	Repeal	2-1-2014	411-320-0130	7-1-2014	Amend(T)	8-1-2014
411-308-0080	12-28-2013	Amend	2-1-2014	411-320-0130(T)	12-28-2013	Repeal	2-1-2014
411-308-0080	7-1-2014	Amend(T)	8-1-2014	411-320-0140	12-28-2013	Amend	2-1-2014
411-308-0080(T)	12-28-2013	Repeal	2-1-2014	411-320-0150	12-28-2013	Amend	2-1-2014
411-308-0090	12-28-2013	Amend	2-1-2014	411-320-0160	12-28-2013	Amend	2-1-2014
411-308-0100	12-28-2013	Amend	2-1-2014	411-320-0170	12-28-2013	Amend	2-1-2014
411-308-0100	7-1-2014	Amend(T)	8-1-2014	411-320-0170	7-1-2014	Amend(T)	8-1-2014
411-308-0100(T)	12-28-2013	Repeal	2-1-2014	411-320-0175	12-28-2013	Amend	2-1-2014
411-308-0110	12-28-2013	Amend	2-1-2014	411-320-0175	7-1-2014	Amend(T)	8-1-2014
411-308-0120	12-28-2013	Amend	2-1-2014	411-320-0180	12-28-2013	Amend	2-1-2014
411-308-0120	7-1-2014	Amend(T)	8-1-2014	411-320-0190	12-28-2013	Amend	2-1-2014
411-308-0120(T)	12-28-2013	Repeal	2-1-2014	411-320-0200	12-28-2013	Amend	2-1-2014
411-308-0130	12-28-2013	Amend	2-1-2014	411-323-0010	7-1-2014	Amend(T)	8-1-2014
411-308-0130	7-1-2014	Amend(T)	8-1-2014	411-323-0020	7-1-2014	Amend(T)	8-1-2014
411-308-0135	7-1-2014	Adopt(T)	8-1-2014	411-323-0030	7-1-2014	Amend(T)	8-1-2014
411-308-0140	12-28-2013	Amend	2-1-2014	411-323-0035	7-1-2014	Amend(T)	8-1-2014
411-308-0150	12-28-2013	Amend	2-1-2014	411-323-0050	7-1-2014	Amend(T)	8-1-2014
411-317-0000	7-1-2014	Adopt(T)	8-1-2014	411-323-0060	7-1-2014	Amend(T)	8-1-2014
411-318-0000	7-1-2014	Adopt(T)	8-1-2014	411-323-0070	7-1-2014	Amend(T)	8-1-2014
411-318-0005	7-1-2014	Adopt(T)	8-1-2014	411-325-0010	12-28-2013	Amend	2-1-2014
411-318-0010	7-1-2014	Adopt(T)	8-1-2014	411-325-0020	12-28-2013	Amend	2-1-2014
411-318-0015	7-1-2014	Adopt(T)	8-1-2014	411-325-0020	7-1-2014	Amend(T)	8-1-2014
411-318-0020	7-1-2014	Adopt(T)	8-1-2014	411-325-0020(T)	12-28-2013	Repeal	2-1-2014
411-318-0025	7-1-2014	Adopt(T)	8-1-2014	411-325-0030	12-28-2013	Amend	2-1-2014
411-318-0030	7-1-2014	Adopt(T)	8-1-2014	411-325-0040	12-28-2013	Amend	2-1-2014
411-320-0010	12-28-2013	Amend	2-1-2014	411-325-0050	12-28-2013	Amend	2-1-2014
411-320-0020	12-28-2013	Amend	2-1-2014	411-325-0060	12-28-2013	Amend	2-1-2014
411-320-0020	7-1-2014	Amend(T)	8-1-2014	411-325-0060	7-1-2014	Amend(T)	8-1-2014
411-320-0020(T)	12-28-2013	Repeal	2-1-2014	411-325-0070	12-28-2013	Amend	2-1-2014
411-320-0030	12-28-2013	Amend	2-1-2014	411-325-0090	12-28-2013	Amend	2-1-2014
411-320-0030(T)	12-28-2013	Repeal	2-1-2014	411-325-0110	12-28-2013	Amend	2-1-2014
411-320-0040	12-28-2013	Amend	2-1-2014	411-325-0110	7-1-2014	Amend(T)	8-1-2014
411-320-0040	7-1-2014	Amend(T)	8-1-2014	411-325-0120	12-28-2013	Amend	2-1-2014
411-320-0040(T)	12-28-2013	Repeal	2-1-2014	411-325-0120	7-1-2014	Amend(T)	8-1-2014
411-320-0045	12-28-2013	Amend	2-1-2014	411-325-0130	12-28-2013	Amend	2-1-2014
411-320-0050	12-28-2013	Amend	2-1-2014	411-325-0140	12-28-2013	Amend	2-1-2014
411-320-0060	12-28-2013	Amend	2-1-2014	411-325-0150	12-28-2013	Amend	2-1-2014
411-320-0060	7-1-2014	Amend(T)	8-1-2014	411-325-0170	12-28-2013	Amend	2-1-2014
411-320-0060(T)	12-28-2013	Repeal	2-1-2014	411-325-0180	12-28-2013	Amend	2-1-2014
411-320-0070	12-28-2013	Amend	2-1-2014	411-325-0185	12-28-2013	Amend	2-1-2014
411-320-0070(T)	12-28-2013	Repeal	2-1-2014	411-325-0190	12-28-2013	Amend	2-1-2014
411-320-0080	12-28-2013	Amend	2-1-2014	411-325-0200	12-28-2013	Amend	2-1-2014
411-320-0080	7-1-2014	Amend(T)	8-1-2014	411-325-0220	12-28-2013	Amend	2-1-2014
411-320-0090	12-28-2013	Amend	2-1-2014	411-325-0230	12-28-2013	Amend	2-1-2014
411-320-0090	7-1-2014	Amend(T)	8-1-2014	411-325-0240	12-28-2013	Amend	2-1-2014
411-320-0090(T)	12-28-2013	Repeal	2-1-2014	411-325-0250	12-28-2013	Amend	2-1-2014
411-320-0100	12-28-2013	Amend	2-1-2014	411-325-0260	12-28-2013	Amend	2-1-2014
411-320-0100	7-1-2014	Amend(T)	8-1-2014	411-325-0270	12-28-2013	Amend	2-1-2014
411-320-0100(T)	12-28-2013	Repeal	2-1-2014	411-325-0280	12-28-2013	Amend	2-1-2014
411-320-0110	12-28-2013	Amend	2-1-2014	411-325-0290	12-28-2013	Amend	2-1-2014
411-320-0110	7-1-2014	Amend(T)	8-1-2014	411-325-0300	12-28-2013	Amend	2-1-2014
411-320-0110(T)	12-28-2013	Repeal	2-1-2014	411-325-0300	7-1-2014	Amend(T)	8-1-2014
411-320-0120	12-28-2013	Amend	2-1-2014	411-325-0320	12-28-2013	Amend	2-1-2014
411-320-0120	7-1-2014	Amend(T)	8-1-2014	411-325-0320	7-1-2014	Suspend	8-1-2014

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411-325-0330	7-1-2014	Suspend	8-1-2014	411-330-0020	12-28-2013	Amend	2-1-2014
411-325-0340	12-28-2013	Amend	2-1-2014	411-330-0020	7-1-2014	Amend(T)	8-1-2014
411-325-0350	12-28-2013	Amend	2-1-2014	411-330-0020(T)	12-28-2013	Repeal	2-1-2014
411-325-0360	12-28-2013	Amend	2-1-2014	411-330-0030	12-28-2013	Amend	2-1-2014
411-325-0370	12-28-2013	Amend	2-1-2014	411-330-0030	7-1-2014	Amend(T)	8-1-2014
411-325-0380	12-28-2013	Amend	2-1-2014	411-330-0030(T)	12-28-2013	Repeal	2-1-2014
411-325-0390	12-28-2013	Amend	2-1-2014	411-330-0040	12-28-2013	Amend	2-1-2014
411-325-0390	7-1-2014	Amend(T)	8-1-2014	411-330-0040	7-1-2014	Amend(T)	8-1-2014
411-325-0390(T)	12-28-2013	Repeal	2-1-2014	411-330-0040(T)	12-28-2013	Repeal	2-1-2014
411-325-0400	12-28-2013	Amend	2-1-2014	411-330-0050	12-28-2013	Amend	2-1-2014
411-325-0400	7-1-2014	Suspend	8-1-2014	411-330-0050	7-1-2014	Amend(T)	8-1-2014
411-325-0400(T)	12-28-2013	Repeal	2-1-2014	411-330-0050(T)	12-28-2013	Repeal	2-1-2014
411-325-0410	12-28-2013	Amend	2-1-2014	411-330-0060	12-28-2013	Amend	2-1-2014
411-325-0420	12-28-2013	Amend	2-1-2014	411-330-0060	7-1-2014	Amend(T)	8-1-2014
411-325-0430	12-28-2013	Amend	2-1-2014	411-330-0060(T)	12-28-2013	Repeal	2-1-2014
411-325-0430	7-1-2014	Amend(T)	8-1-2014	411-330-0065	12-28-2013	Amend	2-1-2014
411-325-0440	12-28-2013	Amend	2-1-2014	411-330-0070	12-28-2013	Amend	2-1-2014
411-325-0440(T)	12-28-2013	Repeal	2-1-2014	411-330-0070	7-1-2014	Amend(T)	8-1-2014
411-325-0460	12-28-2013	Amend	2-1-2014	411-330-0070(T)	12-28-2013	Repeal	2-1-2014
411-325-0460	7-1-2014	Amend(T)	8-1-2014	411-330-0080	12-28-2013	Amend	2-1-2014
411-325-0470	12-28-2013	Amend	2-1-2014	411-330-0080	7-1-2014	Amend(T)	8-1-2014
411-325-0480	12-28-2013	Amend	2-1-2014	411-330-0080(T)	12-28-2013	Repeal	2-1-2014
411-328-0550	12-28-2013	Amend	2-1-2014	411-330-0090	12-28-2013	Amend	2-1-2014
411-328-0560	12-28-2013	Amend	2-1-2014	411-330-0090	7-1-2014	Amend(T)	8-1-2014
411-328-0560	7-1-2014	Amend(T)	8-1-2014	411-330-0090(T)	12-28-2013	Repeal	2-1-2014
411-328-0560(T)	12-28-2013	Repeal	2-1-2014	411-330-0100	12-28-2013	Amend	2-1-2014
411-328-0570	12-28-2013	Amend	2-1-2014	411-330-0100	7-1-2014	Amend(T)	8-1-2014
411-328-0620	12-28-2013	Amend	2-1-2014	411-330-0110	12-28-2013	Amend	2-1-2014
411-328-0630	12-28-2013	Amend	2-1-2014	411-330-0110	7-1-2014	Amend(T)	8-1-2014
411-328-0640	12-28-2013	Amend	2-1-2014	411-330-0110(T)	12-28-2013	Repeal	2-1-2014
411-328-0650	12-28-2013	Amend	2-1-2014	411-330-0120	12-28-2013	Amend	2-1-2014
411-328-0660	12-28-2013	Amend	2-1-2014	411-330-0130	12-28-2013	Amend	2-1-2014
411-328-0680	12-28-2013	Amend	2-1-2014	411-330-0130	7-1-2014	Amend(T)	8-1-2014
411-328-0690	12-28-2013	Amend	2-1-2014	411-330-0140	12-28-2013	Amend	2-1-2014
411-328-0700	12-28-2013	Amend	2-1-2014	411-330-0150	12-28-2013	Amend	2-1-2014
411-328-0700	7-1-2014	Amend(T)	8-1-2014	411-330-0160	12-28-2013	Amend	2-1-2014
411-328-0710	12-28-2013	Amend	2-1-2014	411-330-0170	12-28-2013	Amend	2-1-2014
411-328-0715	12-28-2013	Amend	2-1-2014	411-335-0010	1-1-2014	Suspend	2-1-2014
411-328-0720	12-28-2013	Amend	2-1-2014	411-335-0010	4-1-2014	Repeal	5-1-2014
411-328-0720	7-1-2014	Amend(T)	8-1-2014	411-335-0020	1-1-2014	Suspend	2-1-2014
411-328-0740	12-28-2013	Amend	2-1-2014	411-335-0020	4-1-2014	Repeal	5-1-2014
411-328-0740	7-1-2014	Suspend	8-1-2014	411-335-0030	1-1-2014	Suspend	2-1-2014
411-328-0750	12-28-2013	Amend	2-1-2014	411-335-0030	4-1-2014	Repeal	5-1-2014
411-328-0750	7-1-2014	Amend(T)	8-1-2014	411-335-0040	1-1-2014	Suspend	2-1-2014
411-328-0760	12-28-2013	Amend	2-1-2014	411-335-0040	4-1-2014	Repeal	5-1-2014
411-328-0760	7-1-2014	Amend(T)	8-1-2014	411-335-0060	1-1-2014	Suspend	2-1-2014
411-328-0770	12-28-2013	Amend	2-1-2014	411-335-0060	4-1-2014	Repeal	5-1-2014
411-328-0770	7-1-2014	Amend(T)	8-1-2014	411-335-0120	1-1-2014	Suspend	2-1-2014
411-328-0780	12-28-2013	Amend	2-1-2014	411-335-0120	4-1-2014	Repeal	5-1-2014
411-328-0790	12-28-2013	Amend	2-1-2014	411-335-0130	1-1-2014	Suspend	2-1-2014
411-328-0790	7-1-2014	Amend(T)	8-1-2014	411-335-0130	4-1-2014	Repeal	5-1-2014
411-328-0790(T)	12-28-2013	Repeal	2-1-2014	411-335-0150	1-1-2014	Suspend	2-1-2014
411-328-0800	12-28-2013	Amend	2-1-2014	411-335-0150	4-1-2014	Repeal	5-1-2014
411-328-0800	7-1-2014	Suspend	8-1-2014	411-335-0160	1-1-2014	Suspend	2-1-2014
411-328-0800(T)	12-28-2013	Repeal	2-1-2014	411-335-0160	4-1-2014	Repeal	5-1-2014

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411-335-0170	4-1-2014	Repeal	5-1-2014	411-340-0120	7-1-2014	Amend(T)	8-1-2014
411-335-0180	1-1-2014	Suspend	2-1-2014	411-340-0120(T)	12-28-2013	Repeal	2-1-2014
411-335-0180	4-1-2014	Repeal	5-1-2014	411-340-0125	12-28-2013	Amend	2-1-2014
411-335-0190	1-1-2014	Suspend	2-1-2014	411-340-0125(T)	12-28-2013	Repeal	2-1-2014
411-335-0190	4-1-2014	Repeal	5-1-2014	411-340-0130	12-28-2013	Amend	2-1-2014
411-335-0200	1-1-2014	Suspend	2-1-2014	411-340-0130	7-1-2014	Amend(T)	8-1-2014
411-335-0200	4-1-2014	Repeal	5-1-2014	411-340-0130(T)	12-28-2013	Repeal	2-1-2014
411-335-0210	1-1-2014	Suspend	2-1-2014	411-340-0135	7-1-2014	Adopt(T)	8-1-2014
411-335-0210	4-1-2014	Repeal	5-1-2014	411-340-0140	12-28-2013	Amend	2-1-2014
411-335-0220	1-1-2014	Suspend	2-1-2014	411-340-0150	12-28-2013	Amend	2-1-2014
411-335-0220	4-1-2014	Repeal	5-1-2014	411-340-0150	7-1-2014	Amend(T)	8-1-2014
411-335-0230	1-1-2014	Suspend	2-1-2014	411-340-0150(T)	12-28-2013	Repeal	2-1-2014
411-335-0230	4-1-2014	Repeal	5-1-2014	411-340-0160	12-28-2013	Amend	2-1-2014
411-335-0240	1-1-2014	Suspend	2-1-2014	411-340-0160	7-1-2014	Amend(T)	8-1-2014
411-335-0240	4-1-2014	Repeal	5-1-2014	411-340-0170	12-28-2013	Amend	2-1-2014
411-335-0250	1-1-2014	Suspend	2-1-2014	411-340-0170	7-1-2014	Amend(T)	8-1-2014
411-335-0250	4-1-2014	Repeal	5-1-2014	411-340-0180	12-28-2013	Amend	2-1-2014
411-335-0260	1-1-2014	Suspend	2-1-2014	411-341-1300	7-1-2014	Repeal	8-1-2014
411-335-0260	4-1-2014	Repeal	5-1-2014	411-341-1310	7-1-2014	Repeal	8-1-2014
411-335-0270	1-1-2014	Suspend	2-1-2014	411-341-1320	7-1-2014	Repeal	8-1-2014
411-335-0270	4-1-2014	Repeal	5-1-2014	411-341-1330	7-1-2014	Repeal	8-1-2014
411-335-0280	1-1-2014	Suspend	2-1-2014	411-341-1340	7-1-2014	Repeal	8-1-2014
411-335-0280	4-1-2014	Repeal	5-1-2014	411-341-1350	7-1-2014	Repeal	8-1-2014
411-335-0290	1-1-2014	Suspend	2-1-2014	411-341-1360	7-1-2014	Repeal	8-1-2014
411-335-0290	4-1-2014	Repeal	5-1-2014	411-341-1370	7-1-2014	Repeal	8-1-2014
411-335-0310	1-1-2014	Suspend	2-1-2014	411-345-0010	12-28-2013	Amend	2-1-2014
411-335-0310	4-1-2014	Repeal	5-1-2014	411-345-0010	7-1-2014	Amend(T)	8-1-2014
411-335-0320	1-1-2014	Suspend	2-1-2014	411-345-0020	12-28-2013	Amend	2-1-2014
411-335-0320	4-1-2014	Repeal	5-1-2014	411-345-0020	7-1-2014	Amend(T)	8-1-2014
411-335-0330	1-1-2014	Suspend	2-1-2014	411-345-0020(T)	12-28-2013	Repeal	2-1-2014
411-335-0330	4-1-2014	Repeal	5-1-2014	411-345-0025	7-1-2014	Amend(T)	8-1-2014
411-335-0340	1-1-2014	Suspend	2-1-2014	411-345-0027	7-1-2014	Adopt(T)	8-1-2014
411-335-0340	4-1-2014	Repeal	5-1-2014	411-345-0030	7-1-2014	Amend(T)	8-1-2014
411-335-0350	1-1-2014	Suspend	2-1-2014	411-345-0050	7-1-2014	Amend(T)	8-1-2014
411-335-0350	4-1-2014	Repeal	5-1-2014	411-345-0085	7-1-2014	Adopt(T)	8-1-2014
411-335-0360	1-1-2014	Suspend	2-1-2014	411-345-0090	7-1-2014	Amend(T)	8-1-2014
411-335-0360	4-1-2014	Repeal	5-1-2014	411-345-0095	12-28-2013	Amend	2-1-2014
411-340-0010	12-28-2013	Amend	2-1-2014	411-345-0095	7-1-2014	Amend(T)	8-1-2014
411-340-0020	12-28-2013	Amend	2-1-2014	411-345-0100	7-1-2014	Suspend	8-1-2014
411-340-0020	7-1-2014	Amend(T)	8-1-2014	411-345-0110	12-28-2013	Amend	2-1-2014
411-340-0020(T)	12-28-2013	Repeal	2-1-2014	411-345-0110	7-1-2014	Amend(T)	8-1-2014
411-340-0030	12-28-2013	Amend	2-1-2014	411-345-0130	12-28-2013	Amend	2-1-2014
411-340-0040	12-28-2013	Amend	2-1-2014	411-345-0130	7-1-2014	Amend(T)	8-1-2014
411-340-0050	12-28-2013	Amend	2-1-2014	411-345-0140	12-28-2013	Amend	2-1-2014
411-340-0060	12-28-2013	Amend	2-1-2014	411-345-0140	7-1-2014	Amend(T)	8-1-2014
411-340-0060	7-1-2014	Amend(T)	8-1-2014	411-345-0140(T)	12-28-2013	Repeal	2-1-2014
411-340-0070	12-28-2013	Amend	2-1-2014	411-345-0160	12-28-2013	Amend	2-1-2014
411-340-0080	12-28-2013	Amend	2-1-2014	411-345-0160	7-1-2014	Amend(T)	8-1-2014
411-340-0090	12-28-2013	Amend	2-1-2014	411-345-0170	12-28-2013	Amend	2-1-2014
411-340-0100	12-28-2013	Amend	2-1-2014	411-345-0170	7-1-2014	Amend(T)	8-1-2014
411-340-0100	7-1-2014	Amend(T)	8-1-2014	411-345-0180	12-28-2013	Amend	2-1-2014
411-340-0100(T)	12-28-2013	Repeal	2-1-2014	411-345-0180	7-1-2014	Amend(T)	8-1-2014
411-340-0110	12-28-2013	Amend	2-1-2014	411-345-0190	12-28-2013	Amend	2-1-2014
411-340-0110	7-1-2014	Amend(T)	8-1-2014	411-345-0190	7-1-2014	Amend(T)	8-1-2014
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411-345-0230	12-28-2013	Amend	2-1-2014	411-355-0060	12-28-2013	Amend	2-1-2014
411-345-0230	7-1-2014	Amend(T)	8-1-2014	411-355-0070	12-28-2013	Amend	2-1-2014
411-345-0240	12-28-2013	Amend	2-1-2014	411-355-0080	12-28-2013	Amend	2-1-2014
411-345-0240	7-1-2014	Amend(T)	8-1-2014	411-355-0090	12-28-2013	Amend	2-1-2014
411-345-0250	12-28-2013	Amend	2-1-2014	411-355-0100	12-28-2013	Amend	2-1-2014
411-345-0250	7-1-2014	Amend(T)	8-1-2014	411-355-0110	12-28-2013	Amend	2-1-2014
411-345-0260	12-28-2013	Amend	2-1-2014	411-355-0120	12-28-2013	Amend	2-1-2014
411-345-0260	7-1-2014	Amend(T)	8-1-2014	411-360-0020	7-1-2014	Amend(T)	8-1-2014
411-345-0270	12-28-2013	Amend	2-1-2014	411-360-0140	7-1-2014	Amend(T)	8-1-2014
411-345-0270	7-1-2014	Amend(T)	8-1-2014	411-360-0170	7-1-2014	Amend(T)	8-1-2014
411-346-0100	12-28-2013	Amend	2-1-2014	411-360-0190	7-1-2014	Amend(T)	8-1-2014
411-346-0110	12-28-2013	Amend	2-1-2014	411-360-0250	7-1-2014	Amend(T)	8-1-2014
411-346-0110	7-1-2014	Amend(T)	8-1-2014	411-360-0275	7-1-2014	Amend(T)	8-1-2014
411-346-0110(T)	12-28-2013	Repeal	2-1-2014	411-375-0000	7-1-2014	Adopt(T)	8-1-2014
411-346-0120	12-28-2013	Amend	2-1-2014	411-375-0010	7-1-2014	Adopt(T)	8-1-2014
411-346-0130	12-28-2013	Amend	2-1-2014	411-375-0020	7-1-2014	Adopt(T)	8-1-2014
411-346-0140	12-28-2013	Amend	2-1-2014	411-375-0030	7-1-2014	Adopt(T)	8-1-2014
411-346-0150	12-28-2013	Amend	2-1-2014	411-375-0040	7-1-2014	Adopt(T)	8-1-2014
411-346-0150	7-1-2014	Amend(T)	8-1-2014	411-375-0050	7-1-2014	Adopt(T)	8-1-2014
411-346-0160	12-28-2013	Amend	2-1-2014	411-375-0060	7-1-2014	Adopt(T)	8-1-2014
411-346-0165	12-28-2013	Amend	2-1-2014	411-375-0070	7-1-2014	Adopt(T)	8-1-2014
411-346-0170	12-28-2013	Amend	2-1-2014	411-375-0080	7-1-2014	Adopt(T)	8-1-2014
411-346-0180	12-28-2013	Amend	2-1-2014	413-010-0000	1-1-2014	Amend	2-1-2014
411-346-0180	7-1-2014	Amend(T)	8-1-2014	413-010-0010	1-1-2014	Amend	2-1-2014
411-346-0180(T)	12-28-2013	Repeal	2-1-2014	413-010-0030	1-1-2014	Amend	2-1-2014
411-346-0190	12-28-2013	Amend	2-1-2014	413-010-0035	1-1-2014	Amend	2-1-2014
411-346-0190	7-1-2014	Amend(T)	8-1-2014	413-010-0045	1-1-2014	Amend	2-1-2014
411-346-0200	12-28-2013	Amend	2-1-2014	413-010-0055	1-1-2014	Amend	2-1-2014
411-346-0210	12-28-2013	Amend	2-1-2014	413-010-0065	1-1-2014	Amend	2-1-2014
411-346-0220	12-28-2013	Amend	2-1-2014	413-010-0068	1-1-2014	Amend	2-1-2014
411-346-0230	12-28-2013	Amend	2-1-2014	413-010-0075	1-1-2014	Amend	2-1-2014
411-350-0010	12-28-2013	Amend	2-1-2014	413-010-0170	1-1-2014	Amend	2-1-2014
411-350-0020	12-28-2013	Amend	2-1-2014	413-010-0175	1-1-2014	Amend	2-1-2014
411-350-0020(T)	12-28-2013	Repeal	2-1-2014	413-010-0180	1-1-2014	Amend	2-1-2014
411-350-0030	12-28-2013	Amend	2-1-2014	413-010-0185	1-1-2014	Adopt	2-1-2014
411-350-0030(T)	12-28-2013	Repeal	2-1-2014	413-010-0300	1-1-2014	Amend	2-1-2014
411-350-0040	12-28-2013	Amend	2-1-2014	413-010-0310	1-1-2014	Amend	2-1-2014
411-350-0040(T)	12-28-2013	Repeal	2-1-2014	413-010-0310	6-3-2014	Amend	7-1-2014
411-350-0050	12-28-2013	Amend	2-1-2014	413-010-0320	1-1-2014	Amend	2-1-2014
411-350-0050(T)	12-28-2013	Repeal	2-1-2014	413-010-0330	1-1-2014	Amend	2-1-2014
411-350-0080	12-28-2013	Amend	2-1-2014	413-010-0340	1-1-2014	Amend	2-1-2014
411-350-0100	12-28-2013	Amend	2-1-2014	413-015-0100	5-27-2014	Amend	7-1-2014
411-350-0110	12-28-2013	Amend	2-1-2014	413-015-0105	5-27-2014	Amend	7-1-2014
411-350-0115	12-28-2013	Amend	2-1-2014	413-015-0110	5-27-2014	Repeal	7-1-2014
411-350-0118	12-28-2013	Amend	2-1-2014	413-015-0115	5-27-2014	Amend	7-1-2014
411-350-0120	12-28-2013	Amend	2-1-2014	413-015-0115	7-1-2014	Amend(T)	8-1-2014
411-355-0000	12-28-2013	Amend	2-1-2014	413-015-0125	5-27-2014	Amend	7-1-2014
411-355-0010	12-28-2013	Amend	2-1-2014	413-015-0205	5-27-2014	Amend	7-1-2014
411-355-0010(T)	12-28-2013	Repeal	2-1-2014	413-015-0210	5-27-2014	Amend	7-1-2014
411-355-0020	12-28-2013	Amend	2-1-2014	413-015-0211	5-27-2014	Amend	7-1-2014
411-355-0020(T)	12-28-2013	Repeal	2-1-2014	413-015-0212	5-27-2014	Amend	7-1-2014
411-355-0030	12-28-2013	Amend	2-1-2014	413-015-0213	5-27-2014	Amend	7-1-2014
411-355-0030(T)	12-28-2013	Repeal	2-1-2014	413-015-0215	5-27-2014	Amend	7-1-2014
411-355-0040	12-28-2013	Amend	2-1-2014	413-015-0220	5-27-2014	Amend	7-1-2014
411-355-0040(T)	12-28-2013	Repeal	2-1-2014	413-015-0225	5-27-2014	Amend	7-1-2014

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413-015-0403	5-27-2014	Amend	7-1-2014	413-070-0880	1-1-2014	Amend	2-1-2014
413-015-0404	5-27-2014	Adopt	7-1-2014	413-070-0900	2-1-2014	Amend	3-1-2014
413-015-0405	5-27-2014	Amend	7-1-2014	413-070-0905	2-1-2014	Amend	3-1-2014
413-015-0409	5-27-2014	Amend	7-1-2014	413-070-0905	6-3-2014	Amend	7-1-2014
413-015-0409	7-1-2014	Amend(T)	8-1-2014	413-070-0909	2-1-2014	Amend	3-1-2014
413-015-0415	5-27-2014	Amend	7-1-2014	413-070-0917	2-1-2014	Amend	3-1-2014
413-015-0415	7-1-2014	Amend(T)	8-1-2014	413-070-0919	2-1-2014	Amend	3-1-2014
413-015-0420	5-27-2014	Amend	7-1-2014	413-070-0925	2-1-2014	Amend	3-1-2014
413-015-0420	7-1-2014	Amend(T)	8-1-2014	413-070-0934	2-1-2014	Amend	3-1-2014
413-015-0422	5-27-2014	Adopt	7-1-2014	413-070-0939	2-1-2014	Amend	3-1-2014
413-015-0425	5-27-2014	Amend	7-1-2014	413-070-0949	2-1-2014	Amend	3-1-2014
413-015-0428	5-27-2014	Adopt	7-1-2014	413-070-0959	2-1-2014	Amend	3-1-2014
413-015-0430	5-27-2014	Repeal	7-1-2014	413-070-0964	2-1-2014	Amend	3-1-2014
413-015-0432	5-27-2014	Adopt	7-1-2014	413-070-0969	2-1-2014	Amend	3-1-2014
413-015-0432	7-1-2014	Amend(T)	8-1-2014	413-070-0974	2-1-2014	Amend	3-1-2014
413-015-0435	5-27-2014	Amend	7-1-2014	413-080-0050	5-27-2014	Amend	7-1-2014
413-015-0437	5-27-2014	Adopt	7-1-2014	413-080-0052	5-27-2014	Amend	7-1-2014
413-015-0440	5-27-2014	Amend	7-1-2014	413-080-0054	5-27-2014	Amend	7-1-2014
413-015-0445	5-27-2014	Amend	7-1-2014	413-080-0055	5-27-2014	Amend	7-1-2014
413-015-0450	5-27-2014	Amend	7-1-2014	413-080-0059	5-27-2014	Amend	7-1-2014
413-015-0455	5-27-2014	Amend	7-1-2014	413-100-0400	1-1-2014	Amend(T)	2-1-2014
413-015-0470	5-27-2014	Amend	7-1-2014	413-100-0400	6-12-2014	Amend	7-1-2014
413-015-0475	5-27-2014	Amend	7-1-2014	413-100-0400(T)	6-12-2014	Repeal	7-1-2014
413-015-0520	5-27-2014	Amend	7-1-2014	413-100-0410	1-1-2014	Amend(T)	2-1-2014
413-015-0525	5-27-2014	Amend	7-1-2014	413-100-0410	6-12-2014	Amend	7-1-2014
413-015-0535	5-27-2014	Amend	7-1-2014	413-100-0410(T)	6-12-2014	Repeal	7-1-2014
413-015-0540	7-1-2014	Amend(T)	8-1-2014	413-100-0420	1-1-2014	Amend(T)	2-1-2014
413-015-0550	5-27-2014	Amend	7-1-2014	413-100-0420	6-12-2014	Amend	7-1-2014
413-015-0560	5-27-2014	Amend	7-1-2014	413-100-0420(T)	6-12-2014	Repeal	7-1-2014
413-015-0565	5-27-2014	Amend	7-1-2014	413-100-0430	1-1-2014	Amend(T)	2-1-2014
413-015-1105	7-1-2014	Amend(T)	8-1-2014	413-100-0430	6-12-2014	Amend	7-1-2014
413-015-1110	5-27-2014	Amend	7-1-2014	413-100-0430(T)	6-12-2014	Repeal	7-1-2014
413-015-1125	5-27-2014	Amend	7-1-2014	413-100-0432	6-12-2014	Adopt	7-1-2014
413-015-1210	5-27-2014	Amend	7-1-2014	413-100-0435	1-1-2014	Adopt(T)	2-1-2014
413-015-1220	5-27-2014	Amend	7-1-2014	413-100-0435	6-12-2014	Adopt	7-1-2014
413-015-1230	5-27-2014	Amend	7-1-2014	413-100-0435(T)	6-12-2014	Repeal	7-1-2014
413-015-9000	5-27-2014	Adopt	7-1-2014	413-100-0440	1-1-2014	Suspend	2-1-2014
413-015-9010	5-27-2014	Adopt	7-1-2014	413-100-0440	6-12-2014	Repeal	7-1-2014
413-015-9020	5-27-2014	Adopt	7-1-2014	413-100-0445	1-1-2014	Amend(T)	2-1-2014
413-015-9030	5-27-2014	Adopt	7-1-2014	413-100-0445	6-12-2014	Amend	7-1-2014
413-015-9040	5-27-2014	Adopt	7-1-2014	413-100-0445(T)	6-12-2014	Repeal	7-1-2014
413-015-9040	7-1-2014	Amend(T)	8-1-2014	413-100-0450	1-1-2014	Suspend	2-1-2014
413-040-0370	4-1-2014	Repeal	5-1-2014	413-100-0450	6-12-2014	Repeal	7-1-2014
413-040-0380	4-1-2014	Repeal	5-1-2014	413-100-0451	6-12-2014	Adopt	7-1-2014
413-040-0390	4-1-2014	Repeal	5-1-2014	413-100-0455	1-1-2014	Amend(T)	2-1-2014
413-070-0063	6-3-2014	Amend	7-1-2014	413-100-0455	6-12-2014	Amend	7-1-2014
413-070-0505	6-3-2014	Amend	7-1-2014	413-100-0455(T)	6-12-2014	Repeal	7-1-2014
413-070-0620	6-3-2014	Amend	7-1-2014	413-100-0457	2-4-2014	Adopt(T)	3-1-2014
413-070-0655	6-3-2014	Amend	7-1-2014	413-100-0457	6-12-2014	Adopt	7-1-2014
413-070-0800	1-1-2014	Amend	2-1-2014	413-100-0457(T)	6-12-2014	Repeal	7-1-2014
413-070-0810	1-1-2014	Amend	2-1-2014	413-100-0460	1-1-2014	Amend(T)	2-1-2014
413-070-0830	1-1-2014	Amend	2-1-2014	413-100-0460	6-12-2014	Amend	7-1-2014
413-070-0840	1-1-2014	Amend	2-1-2014	413-100-0460(T)	6-12-2014	Repeal	7-1-2014
413-070-0855	1-1-2014	Amend	2-1-2014	413-100-0470	1-1-2014	Suspend	2-1-2014
413-070-0860	1-1-2014	Amend	2-1-2014	413-100-0470	6-12-2014	Repeal	7-1-2014

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413-100-0480	6-12-2014	Repeal	7-1-2014	413-140-0030	1-1-2014	Amend	2-1-2014
413-100-0490	1-1-2014	Suspend	2-1-2014	413-140-0031	1-1-2014	Adopt	2-1-2014
413-100-0490	6-12-2014	Repeal	7-1-2014	413-140-0032	1-1-2014	Adopt	2-1-2014
413-100-0500	1-1-2014	Suspend	2-1-2014	413-140-0033	1-1-2014	Adopt	2-1-2014
413-100-0500	6-12-2014	Repeal	7-1-2014	413-140-0035	1-1-2014	Amend	2-1-2014
413-100-0510	1-1-2014	Suspend	2-1-2014	413-140-0040	1-1-2014	Amend	2-1-2014
413-100-0510	6-12-2014	Repeal	7-1-2014	413-140-0045	1-1-2014	Repeal	2-1-2014
413-100-0520	1-1-2014	Suspend	2-1-2014	413-140-0047	1-1-2014	Adopt	2-1-2014
413-100-0520	6-12-2014	Repeal	7-1-2014	413-140-0055	1-1-2014	Repeal	2-1-2014
413-100-0530	1-1-2014	Amend(T)	2-1-2014	413-140-0065	1-1-2014	Amend	2-1-2014
413-100-0530	6-12-2014	Amend	7-1-2014	413-140-0080	1-1-2014	Repeal	2-1-2014
413-100-0530(T)	6-12-2014	Repeal	7-1-2014	413-140-0110	1-1-2014	Amend	2-1-2014
413-100-0540	1-1-2014	Suspend	2-1-2014	413-140-0120	1-1-2014	Repeal	2-1-2014
413-100-0540	6-12-2014	Repeal	7-1-2014	413-200-0409	5-27-2014	Amend	7-1-2014
413-100-0550	1-1-2014	Suspend	2-1-2014	413-200-0414	7-1-2014	Amend(T)	8-1-2014
413-100-0550	6-12-2014	Repeal	7-1-2014	413-215-0918	2-1-2014	Amend	3-1-2014
413-100-0560	1-1-2014	Suspend	2-1-2014	413-310-0000	4-1-2014	Repeal	5-1-2014
413-100-0560	6-12-2014	Repeal	7-1-2014	413-310-0010	4-1-2014	Repeal	5-1-2014
413-100-0580	12-31-2013	Repeal	2-1-2014	413-310-0020	4-1-2014	Repeal	5-1-2014
413-100-0590	12-31-2013	Repeal	2-1-2014	413-310-0030	4-1-2014	Repeal	5-1-2014
413-100-0600	1-1-2014	Suspend	2-1-2014	413-310-0040	4-1-2014	Repeal	5-1-2014
413-100-0600	6-12-2014	Repeal	7-1-2014	413-310-0050	4-1-2014	Repeal	5-1-2014
413-100-0610	1-1-2014	Suspend	2-1-2014	413-310-0060	4-1-2014	Repeal	5-1-2014
413-100-0610	6-12-2014	Repeal	7-1-2014	413-310-0070	4-1-2014	Repeal	5-1-2014
413-120-0010	6-3-2014	Amend	7-1-2014	413-310-0080	4-1-2014	Repeal	5-1-2014
413-120-0195	6-3-2014	Amend	7-1-2014	413-310-0090	4-1-2014	Repeal	5-1-2014
413-120-0510	6-3-2014	Amend	7-1-2014	413-310-0095	4-1-2014	Repeal	5-1-2014
413-120-0710	6-3-2014	Amend	7-1-2014	413-310-0100	4-1-2014	Repeal	5-1-2014
413-120-0900	5-1-2014	Amend	6-1-2014	413-310-0110	4-1-2014	Repeal	5-1-2014
413-120-0905	5-1-2014	Amend	6-1-2014	413-310-0120	4-1-2014	Repeal	5-1-2014
413-120-0910	5-1-2014	Amend	6-1-2014	413-310-0130	4-1-2014	Repeal	5-1-2014
413-120-0920	5-1-2014	Amend	6-1-2014	413-330-0000	1-1-2014	Suspend	2-1-2014
413-120-0925	5-1-2014	Amend	6-1-2014	413-330-0000	4-1-2014	Repeal	5-1-2014
413-120-0930	5-1-2014	Amend	6-1-2014	413-330-0010	1-1-2014	Suspend	2-1-2014
413-120-0940	5-1-2014	Amend	6-1-2014	413-330-0010	4-1-2014	Repeal	5-1-2014
413-120-0945	5-1-2014	Amend	6-1-2014	413-330-0020	1-1-2014	Suspend	2-1-2014
413-120-0950	5-1-2014	Amend	6-1-2014	413-330-0020	4-1-2014	Repeal	5-1-2014
413-120-0960	5-1-2014	Amend	6-1-2014	413-330-0030	1-1-2014	Suspend	2-1-2014
413-120-0970	5-1-2014	Amend	6-1-2014	413-330-0030	4-1-2014	Repeal	5-1-2014
413-130-0000	2-1-2014	Amend	3-1-2014	413-330-0040	1-1-2014	Suspend	2-1-2014
413-130-0010	2-1-2014	Amend	3-1-2014	413-330-0040	4-1-2014	Repeal	5-1-2014
413-130-0015	2-1-2014	Amend	3-1-2014	413-330-0050	1-1-2014	Suspend	2-1-2014
413-130-0020	2-1-2014	Amend	3-1-2014	413-330-0050	4-1-2014	Repeal	5-1-2014
413-130-0040	2-1-2014	Amend	3-1-2014	413-330-0060	1-1-2014	Suspend	2-1-2014
413-130-0050	2-1-2014	Amend	3-1-2014	413-330-0060	4-1-2014	Repeal	5-1-2014
413-130-0055	2-1-2014	Amend	3-1-2014	413-330-0080	1-1-2014	Suspend	2-1-2014
413-130-0070	2-1-2014	Amend	3-1-2014	413-330-0080	4-1-2014	Repeal	5-1-2014
413-130-0075	2-1-2014	Amend	3-1-2014	413-330-0085	4-1-2014	Repeal	5-1-2014
413-130-0077	2-1-2014	Amend	3-1-2014	413-330-0087	4-1-2014	Repeal	5-1-2014
413-130-0080	2-1-2014	Amend	3-1-2014	413-330-0090	4-1-2014	Repeal	5-1-2014
413-130-0110	2-1-2014	Amend	3-1-2014	413-330-0095	4-1-2014	Repeal	5-1-2014
413-130-0125	2-1-2014	Amend	3-1-2014	413-330-0097	4-1-2014	Repeal	5-1-2014
413-130-0130	2-1-2014	Amend	3-1-2014	413-330-0098	4-1-2014	Repeal	5-1-2014
413-140-0000	1-1-2014	Amend	2-1-2014	413-330-0100	4-1-2014	Repeal	5-1-2014
413-140-0010	1-1-2014	Amend	2-1-2014	413-330-0200	4-1-2014	Repeal	5-1-2014

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413-330-0220	4-1-2014	Repeal	5-1-2014	414-900-0020	1-15-2014	Adopt	2-1-2014
413-330-0230	4-1-2014	Repeal	5-1-2014	415-012-0000	1-28-2014	Amend(T)	3-1-2014
413-330-0240	4-1-2014	Repeal	5-1-2014	415-012-0000	6-19-2014	Amend	7-1-2014
413-330-0250	4-1-2014	Repeal	5-1-2014	415-012-0057	12-20-2013	Adopt(T)	2-1-2014
413-330-0260	4-1-2014	Repeal	5-1-2014	415-012-0057	6-19-2014	Adopt	7-1-2014
413-330-0270	4-1-2014	Repeal	5-1-2014	415-012-0058	12-20-2013	Adopt(T)	2-1-2014
413-330-0280	4-1-2014	Repeal	5-1-2014	415-012-0058	6-19-2014	Adopt	7-1-2014
413-330-0290	4-1-2014	Repeal	5-1-2014	415-065-0005	4-24-2014	Amend	6-1-2014
413-330-0300	4-1-2014	Repeal	5-1-2014	415-065-0010	4-24-2014	Amend	6-1-2014
413-330-0310	4-1-2014	Repeal	5-1-2014	415-065-0015	4-24-2014	Repeal	6-1-2014
413-330-0320	4-1-2014	Repeal	5-1-2014	415-065-0025	4-24-2014	Repeal	6-1-2014
413-330-0330	4-1-2014	Repeal	5-1-2014	415-065-0030	4-24-2014	Amend	6-1-2014
413-330-0340	4-1-2014	Repeal	5-1-2014	415-065-0035	4-24-2014	Amend	6-1-2014
413-330-0350	4-1-2014	Repeal	5-1-2014	415-065-0040	4-24-2014	Amend	6-1-2014
413-330-0360	4-1-2014	Repeal	5-1-2014	415-065-0045	4-24-2014	Amend	6-1-2014
413-330-0500	4-1-2014	Repeal	5-1-2014	415-065-0050	4-24-2014	Amend	6-1-2014
413-330-0510	4-1-2014	Repeal	5-1-2014	415-065-0055	4-24-2014	Amend	6-1-2014
413-330-0520	4-1-2014	Repeal	5-1-2014	415-065-0060	4-24-2014	Amend	6-1-2014
413-330-0530	4-1-2014	Repeal	5-1-2014	415-065-0065	4-24-2014	Repeal	6-1-2014
413-330-0540	4-1-2014	Repeal	5-1-2014	415-065-0070	4-24-2014	Amend	6-1-2014
413-330-0600	4-1-2014	Repeal	5-1-2014	415-065-0075	4-24-2014	Amend	6-1-2014
413-330-0610	4-1-2014	Repeal	5-1-2014	415-065-0080	4-24-2014	Adopt	6-1-2014
413-330-0700	4-1-2014	Repeal	5-1-2014	416-530-0000	1-15-2014	Amend	2-1-2014
413-330-0800	4-1-2014	Repeal	5-1-2014	416-530-0010	1-15-2014	Amend	2-1-2014
413-330-0810	4-1-2014	Repeal	5-1-2014	416-530-0020	1-15-2014	Amend	2-1-2014
413-330-0820	4-1-2014	Repeal	5-1-2014	416-530-0030	1-15-2014	Amend	2-1-2014
413-330-0830	4-1-2014	Repeal	5-1-2014	416-530-0035	1-15-2014	Amend	2-1-2014
414-002-0005	1-15-2014	Adopt	2-1-2014	416-530-0040	1-15-2014	Amend	2-1-2014
414-002-0010	1-15-2014	Adopt	2-1-2014	416-530-0050	1-15-2014	Amend	2-1-2014
414-800-0005	1-15-2014	Adopt(T)	2-1-2014	416-530-0060	1-15-2014	Amend	2-1-2014
414-800-0005	7-7-2014	Adopt	8-1-2014	416-530-0070	1-15-2014	Amend	2-1-2014
414-800-0010	1-15-2014	Adopt(T)	2-1-2014	416-530-0080	1-15-2014	Amend	2-1-2014
414-800-0010	7-7-2014	Adopt	8-1-2014	416-530-0090	1-15-2014	Amend	2-1-2014
414-800-0015	1-15-2014	Adopt(T)	2-1-2014	416-530-0100	1-15-2014	Amend	2-1-2014
414-800-0015	7-7-2014	Adopt	8-1-2014	416-530-0110	1-15-2014	Amend	2-1-2014
414-800-0020	1-15-2014	Adopt(T)	2-1-2014	416-530-0125	1-15-2014	Amend	2-1-2014
414-800-0020	7-7-2014	Adopt	8-1-2014	416-530-0130	1-15-2014	Amend	2-1-2014
414-800-0025	1-15-2014	Adopt(T)	2-1-2014	416-530-0140	1-15-2014	Amend	2-1-2014
414-800-0025	7-7-2014	Adopt	8-1-2014	416-530-0150	1-15-2014	Amend	2-1-2014
414-800-0030	1-15-2014	Adopt(T)	2-1-2014	416-530-0160	1-15-2014	Amend	2-1-2014
414-800-0030	7-7-2014	Adopt	8-1-2014	416-530-0170	1-15-2014	Amend	2-1-2014
414-800-0105	1-15-2014	Adopt(T)	2-1-2014	416-530-0200	1-15-2014	Amend	2-1-2014
414-800-0105	7-7-2014	Adopt	8-1-2014	436-001-0030	3-28-2014	Amend	4-1-2014
414-800-0110	1-15-2014	Adopt(T)	2-1-2014	436-008-0001	1-1-2015	Adopt	8-1-2014
414-800-0110	7-7-2014	Adopt	8-1-2014	436-008-0004	1-1-2015	Adopt	8-1-2014
414-800-0115	1-15-2014	Adopt(T)	2-1-2014	436-008-0005	1-1-2015	Adopt	8-1-2014
414-800-0115	7-7-2014	Adopt	8-1-2014	436-008-0010	1-1-2015	Adopt	8-1-2014
414-800-0120	1-15-2014	Adopt(T)	2-1-2014	436-008-0015	1-1-2015	Adopt	8-1-2014
414-800-0120	7-7-2014	Adopt	8-1-2014	436-008-0020	1-1-2015	Adopt	8-1-2014
414-800-0125	1-15-2014	Adopt(T)	2-1-2014	436-008-0025	1-1-2015	Adopt	8-1-2014
414-800-0125	7-7-2014	Adopt	8-1-2014	436-008-0030	1-1-2015	Adopt	8-1-2014
414-800-0130	1-15-2014	Adopt(T)	2-1-2014	436-008-0040	1-1-2015	Adopt	8-1-2014
414-800-0130	7-7-2014	Adopt	8-1-2014	436-009-0001	4-1-2014	Amend	4-1-2014
414-900-0005	1-15-2014	Adopt	2-1-2014	436-009-0002	4-1-2014	Repeal	4-1-2014
414-900-0010	1-15-2014	Adopt	2-1-2014	436-009-0003	4-1-2014	Repeal	4-1-2014

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436-009-0005	4-1-2014	Amend	4-1-2014	436-009-0270	4-1-2014	Repeal	4-1-2014
436-009-0006	4-1-2014	Repeal	4-1-2014	436-009-0275	4-1-2014	Repeal	4-1-2014
436-009-0008	4-1-2014	Amend	4-1-2014	436-009-0285	4-1-2014	Repeal	4-1-2014
436-009-0010	4-1-2014	Amend	4-1-2014	436-009-0290	4-1-2014	Repeal	4-1-2014
436-009-0010	4-15-2014	Amend(T)	5-1-2014	436-009-0998	4-1-2014	Amend	4-1-2014
436-009-0010	7-1-2014	Amend	7-1-2014	436-010-0005	4-1-2014	Amend	4-1-2014
436-009-0010(T)	7-1-2014	Repeal	7-1-2014	436-010-0230	4-1-2014	Amend	4-1-2014
436-009-0015	4-1-2014	Repeal	4-1-2014	436-010-0240	4-1-2014	Amend	4-1-2014
436-009-0018	4-1-2014	Amend	4-1-2014	436-010-0270	4-1-2014	Amend	4-1-2014
436-009-0020	4-1-2014	Amend	4-1-2014	436-010-0280	4-1-2014	Amend	4-1-2014
436-009-0020	4-15-2014	Amend(T)	5-1-2014	436-010-0290	4-1-2014	Amend	4-1-2014
436-009-0020	7-1-2014	Amend	7-1-2014	436-010-0330	4-1-2014	Amend	4-1-2014
436-009-0020(T)	7-1-2014	Repeal	7-1-2014	436-160-0001	7-1-2014	Amend(T)	7-1-2014
436-009-0023	4-1-2014	Adopt	4-1-2014	436-160-0001	10-1-2014	Amend	8-1-2014
436-009-0025	4-1-2014	Amend	4-1-2014	436-160-0001(T)	10-1-2014	Repeal	8-1-2014
436-009-0030	4-1-2014	Amend	4-1-2014	436-160-0004	7-1-2014	Amend(T)	7-1-2014
436-009-0035	4-1-2014	Amend	4-1-2014	436-160-0004	10-1-2014	Amend	8-1-2014
436-009-0040	4-1-2014	Amend	4-1-2014	436-160-0004(T)	10-1-2014	Repeal	8-1-2014
436-009-0050	4-1-2014	Repeal	4-1-2014	436-160-0005	7-1-2014	Amend(T)	7-1-2014
436-009-0060	4-1-2014	Amend	4-1-2014	436-160-0005(T)	10-1-2014	Suspend	8-1-2014
436-009-0070	4-1-2014	Repeal	4-1-2014	436-160-0011	7-1-2014	Adopt(T)	7-1-2014
436-009-0080	4-1-2014	Amend	4-1-2014	436-160-0011(T)	10-1-2014	Suspend	8-1-2014
436-009-0090	4-1-2014	Amend	4-1-2014	436-160-0012	7-1-2014	Adopt(T)	7-1-2014
436-009-0095	4-1-2014	Repeal	4-1-2014	436-160-0012(T)	10-1-2014	Suspend	8-1-2014
436-009-0110	4-1-2014	Amend	4-1-2014	436-160-0013	7-1-2014	Adopt(T)	7-1-2014
436-009-0114	4-1-2014	Repeal	4-1-2014	436-160-0013(T)	10-1-2014	Suspend	8-1-2014
436-009-0115	4-1-2014	Repeal	4-1-2014	436-160-0014	7-1-2014	Adopt(T)	7-1-2014
436-009-0120	4-1-2014	Repeal	4-1-2014	436-160-0014(T)	10-1-2014	Suspend	8-1-2014
436-009-0125	4-1-2014	Repeal	4-1-2014	436-160-0015	7-1-2014	Adopt(T)	7-1-2014
436-009-0130	4-1-2014	Repeal	4-1-2014	436-160-0015(T)	10-1-2014	Suspend	8-1-2014
436-009-0135	4-1-2014	Repeal	4-1-2014	436-160-0016	7-1-2014	Adopt(T)	7-1-2014
436-009-0140	4-1-2014	Repeal	4-1-2014	436-160-0016(T)	10-1-2014	Suspend	8-1-2014
436-009-0145	4-1-2014	Repeal	4-1-2014	436-160-0017	7-1-2014	Adopt(T)	7-1-2014
436-009-0155	4-1-2014	Repeal	4-1-2014	436-160-0017(T)	10-1-2014	Suspend	8-1-2014
436-009-0160	4-1-2014	Repeal	4-1-2014	436-160-0018	7-1-2014	Adopt(T)	7-1-2014
436-009-0165	4-1-2014	Repeal	4-1-2014	436-160-0018(T)	10-1-2014	Suspend	8-1-2014
436-009-0170	4-1-2014	Repeal	4-1-2014	436-160-0019	7-1-2014	Adopt(T)	7-1-2014
436-009-0175	4-1-2014	Repeal	4-1-2014	436-160-0019(T)	10-1-2014	Suspend	8-1-2014
436-009-0177	4-1-2014	Repeal	4-1-2014	436-160-0040	7-1-2014	Amend(T)	7-1-2014
436-009-0180	4-1-2014	Repeal	4-1-2014	436-160-0040(T)	10-1-2014	Suspend	8-1-2014
436-009-0185	4-1-2014	Repeal	4-1-2014	436-160-0060	7-1-2014	Amend(T)	7-1-2014
436-009-0200	4-1-2014	Repeal	4-1-2014	436-160-0060(T)	10-1-2014	Suspend	8-1-2014
436-009-0205	4-1-2014	Repeal	4-1-2014	436-160-0405	7-1-2014	Amend(T)	7-1-2014
436-009-0206	4-1-2014	Repeal	4-1-2014	436-160-0405(T)	10-1-2014	Suspend	8-1-2014
436-009-0207	4-1-2014	Repeal	4-1-2014	436-160-0410	7-1-2014	Amend	3-1-2014
436-009-0210	4-1-2014	Repeal	4-1-2014	436-160-0410	7-1-2014	Amend(T)	7-1-2014
436-009-0215	4-1-2014	Repeal	4-1-2014	436-160-0410	10-1-2014	Amend	8-1-2014
436-009-0220	4-1-2014	Repeal	4-1-2014	436-160-0410(T)	10-1-2014	Repeal	8-1-2014
436-009-0225	4-1-2014	Repeal	4-1-2014	436-160-0415	7-1-2014	Amend(T)	7-1-2014
436-009-0230	4-1-2014	Repeal	4-1-2014	436-160-0415	10-1-2014	Amend	8-1-2014
436-009-0235	4-1-2014	Repeal	4-1-2014	436-160-0415(T)	10-1-2014	Repeal	8-1-2014
436-009-0240	4-1-2014	Repeal	4-1-2014	436-160-0420	7-1-2014	Amend(T)	7-1-2014
436-009-0245	4-1-2014	Repeal	4-1-2014	436-160-0420	10-1-2014	Amend	8-1-2014
436-009-0255	4-1-2014	Repeal	4-1-2014	436-160-0420(T)	10-1-2014	Repeal	8-1-2014
436-009-0260	4-1-2014	Repeal	4-1-2014	436-160-0430	7-1-2014	Amend(T)	7-1-2014

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436-160-0440	7-1-2014	Amend(T)	7-1-2014	442-005-0110	2-1-2014	Repeal	3-1-2014
436-160-0440(T)	10-1-2014	Suspend	8-1-2014	442-005-0120	2-1-2014	Repeal	3-1-2014
436-160-0445	7-1-2014	Amend(T)	7-1-2014	442-005-0130	2-1-2014	Repeal	3-1-2014
436-160-0445(T)	10-1-2014	Suspend	8-1-2014	442-005-0140	2-1-2014	Repeal	3-1-2014
437-002-0005	12-12-2013	Amend	1-1-2014	442-005-0150	2-1-2014	Repeal	3-1-2014
437-002-0080	12-12-2013	Amend	1-1-2014	442-005-0160	2-1-2014	Repeal	3-1-2014
437-002-0140	12-12-2013	Amend	1-1-2014	442-005-0170	2-1-2014	Repeal	3-1-2014
437-002-0240	5-14-2014	Amend	6-1-2014	442-005-0180	2-1-2014	Repeal	3-1-2014
437-002-0312	12-12-2013	Amend	1-1-2014	442-005-0190	2-1-2014	Repeal	3-1-2014
437-003-0001	12-12-2013	Amend	1-1-2014	442-005-0200	2-1-2014	Repeal	3-1-2014
437-007-0780	5-29-2014	Amend	7-1-2014	442-005-0210	2-1-2014	Repeal	3-1-2014
438-005-0035	4-1-2014	Amend	1-1-2014	442-005-0220	2-1-2014	Repeal	3-1-2014
438-005-0046	4-1-2014	Amend	1-1-2014	442-005-0230	2-1-2014	Repeal	3-1-2014
438-005-0046	9-1-2014	Amend	8-1-2014	442-005-0235	2-1-2014	Repeal	3-1-2014
438-006-0020	4-1-2014	Amend	1-1-2014	442-005-0240	2-1-2014	Repeal	3-1-2014
438-006-0031	4-1-2014	Amend	1-1-2014	442-005-0250	2-1-2014	Repeal	3-1-2014
438-006-0036	4-1-2014	Amend	1-1-2014	442-005-0260	2-1-2014	Repeal	3-1-2014
438-006-0045	4-1-2014	Amend	1-1-2014	442-005-0270	2-1-2014	Repeal	3-1-2014
438-006-0062	4-1-2014	Amend	1-1-2014	442-005-0275	2-1-2014	Repeal	3-1-2014
438-006-0075	4-1-2014	Amend	1-1-2014	442-005-0280	2-1-2014	Repeal	3-1-2014
438-006-0105	4-1-2014	Repeal	1-1-2014	442-005-0290	2-1-2014	Repeal	3-1-2014
438-007-0005	4-1-2014	Amend	1-1-2014	442-005-0300	2-1-2014	Repeal	3-1-2014
438-007-0018	4-1-2014	Amend	1-1-2014	442-005-0310	2-1-2014	Repeal	3-1-2014
438-007-0020	4-1-2014	Amend	1-1-2014	442-005-0320	2-1-2014	Repeal	3-1-2014
438-009-0020	4-1-2014	Amend	1-1-2014	442-005-0330	2-1-2014	Repeal	3-1-2014
438-011-0055	4-1-2014	Adopt	1-1-2014	442-005-0340	2-1-2014	Repeal	3-1-2014
441-505-2000	2-12-2014	Adopt	3-1-2014	442-006-0000	1-2-2014	Repeal	2-1-2014
441-730-0010	1-1-2014	Amend(T)	2-1-2014	442-006-0010	1-2-2014	Repeal	2-1-2014
441-730-0025	1-1-2014	Amend(T)	2-1-2014	442-006-0020	1-2-2014	Repeal	2-1-2014
441-730-0030	1-1-2014	Amend(T)	2-1-2014	442-006-0030	1-2-2014	Repeal	2-1-2014
441-910-0096	4-8-2014	Adopt	5-1-2014	442-006-0040	1-2-2014	Repeal	2-1-2014
442-001-0000	1-2-2014	Repeal	2-1-2014	442-010-0010	2-1-2014	Repeal	3-1-2014
442-001-0005	1-2-2014	Repeal	2-1-2014	442-010-0020	2-1-2014	Repeal	3-1-2014
442-001-0050	1-2-2014	Repeal	2-1-2014	442-010-0030	2-1-2014	Repeal	3-1-2014
442-001-0060	1-2-2014	Repeal	2-1-2014	442-010-0040	2-1-2014	Repeal	3-1-2014
442-001-0070	1-2-2014	Repeal	2-1-2014	442-010-0050	2-1-2014	Repeal	3-1-2014
442-001-0080	1-2-2014	Repeal	2-1-2014	442-010-0055	2-1-2014	Repeal	3-1-2014
442-001-0090	1-2-2014	Repeal	2-1-2014	442-010-0060	2-1-2014	Repeal	3-1-2014
442-001-0100	1-2-2014	Repeal	2-1-2014	442-010-0070	2-1-2014	Repeal	3-1-2014
442-001-0110	1-2-2014	Repeal	2-1-2014	442-010-0075	2-1-2014	Repeal	3-1-2014
442-001-0120	1-2-2014	Repeal	2-1-2014	442-010-0080	2-1-2014	Repeal	3-1-2014
442-001-0130	1-2-2014	Repeal	2-1-2014	442-010-0085	2-1-2014	Repeal	3-1-2014
442-001-0140	1-2-2014	Repeal	2-1-2014	442-010-0090	2-1-2014	Repeal	3-1-2014
442-001-0150	1-2-2014	Repeal	2-1-2014	442-010-0100	2-1-2014	Repeal	3-1-2014
442-001-0160	1-2-2014	Repeal	2-1-2014	442-010-0120	2-1-2014	Repeal	3-1-2014
442-005-0000	2-1-2014	Repeal	3-1-2014	442-010-0130	2-1-2014	Repeal	3-1-2014
442-005-0010	2-1-2014	Repeal	3-1-2014	442-010-0140	2-1-2014	Repeal	3-1-2014
442-005-0020	2-1-2014	Repeal	3-1-2014	442-010-0150	2-1-2014	Repeal	3-1-2014
442-005-0030	2-1-2014	Repeal	3-1-2014	442-010-0160	2-1-2014	Repeal	3-1-2014
442-005-0040	2-1-2014	Repeal	3-1-2014	442-010-0170	2-1-2014	Repeal	3-1-2014
442-005-0050	2-1-2014	Repeal	3-1-2014	442-010-0180	2-1-2014	Repeal	3-1-2014
442-005-0060	2-1-2014	Repeal	3-1-2014	442-010-0190	2-1-2014	Repeal	3-1-2014
442-005-0070	2-1-2014	Repeal	3-1-2014	442-010-0210	2-1-2014	Repeal	3-1-2014
442-005-0080	2-1-2014	Repeal	3-1-2014	442-010-0215	2-1-2014	Repeal	3-1-2014
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442-010-0240	2-1-2014	Repeal	3-1-2014	461-001-0000(T)	4-1-2014	Repeal	5-1-2014
442-010-0260	2-1-2014	Repeal	3-1-2014	461-001-0000(T)	7-1-2014	Repeal	8-1-2014
442-010-0270	2-1-2014	Repeal	3-1-2014	461-001-0030	1-1-2014	Amend	2-1-2014
443-003-0005	1-1-2014	Adopt(T)	2-1-2014	461-025-0301	7-1-2014	Amend	8-1-2014
443-003-0010	1-1-2014	Adopt(T)	2-1-2014	461-025-0310	4-1-2014	Amend	5-1-2014
443-003-0015	1-1-2014	Adopt(T)	2-1-2014	461-025-0315	1-1-2014	Amend	2-1-2014
443-003-0015	2-26-2014	Adopt(T)	4-1-2014	461-025-0316	4-1-2014	Amend	5-1-2014
443-003-0020	1-1-2014	Adopt(T)	2-1-2014	461-025-0375	1-1-2014	Amend	2-1-2014
443-003-0020	2-26-2014	Adopt(T)	4-1-2014	461-101-0010	1-1-2014	Amend	2-1-2014
443-003-0025	1-1-2014	Adopt(T)	2-1-2014	461-101-0010	6-26-2014	Amend(T)	8-1-2014
443-003-0025	2-26-2014	Adopt(T)	4-1-2014	461-101-0010	7-1-2014	Amend	8-1-2014
443-003-0030	1-1-2014	Adopt(T)	2-1-2014	461-101-0010	7-1-2014	Amend(T)	8-1-2014
443-003-0035	1-1-2014	Adopt(T)	2-1-2014	461-101-0010(T)	1-1-2014	Repeal	2-1-2014
443-003-0035	2-26-2014	Adopt(T)	4-1-2014	461-101-0010(T)	7-1-2014	Repeal	8-1-2014
443-003-0040	1-1-2014	Adopt(T)	2-1-2014	461-105-0100	1-1-2014	Amend	2-1-2014
443-003-0045	1-1-2014	Adopt(T)	2-1-2014	461-105-0130	1-1-2014	Amend	2-1-2014
443-003-0050	1-1-2014	Adopt(T)	2-1-2014	461-110-0210	1-1-2014	Amend	2-1-2014
443-003-0055	1-1-2014	Adopt(T)	2-1-2014	461-110-0210	7-1-2014	Amend	8-1-2014
443-003-0060	1-1-2014	Adopt(T)	2-1-2014	461-110-0210(T)	1-1-2014	Repeal	2-1-2014
443-003-0065	1-1-2014	Adopt(T)	2-1-2014	461-110-0330	1-1-2014	Amend	2-1-2014
443-003-0070	1-1-2014	Adopt(T)	2-1-2014	461-110-0330(T)	1-1-2014	Repeal	2-1-2014
443-003-0070	2-26-2014	Adopt(T)	4-1-2014	461-110-0340	1-1-2014	Amend	2-1-2014
443-003-0075	1-1-2014	Adopt(T)	2-1-2014	461-110-0340	7-1-2014	Repeal	8-1-2014
443-003-0080	1-1-2014	Adopt(T)	2-1-2014	461-110-0340(T)	1-1-2014	Repeal	2-1-2014
443-003-0085	1-1-2014	Adopt(T)	2-1-2014	461-110-0350	1-8-2014	Amend(T)	2-1-2014
443-003-0090	1-1-2014	Adopt(T)	2-1-2014	461-110-0350	7-1-2014	Amend	8-1-2014
443-003-0095	1-1-2014	Adopt(T)	2-1-2014	461-110-0350(T)	7-1-2014	Repeal	8-1-2014
443-003-0100	1-1-2014	Adopt(T)	2-1-2014	461-110-0400(T)	1-1-2014	Repeal	2-1-2014
443-003-0105	1-1-2014	Adopt(T)	2-1-2014	461-110-0410	7-1-2014	Amend	8-1-2014
443-003-0110	1-1-2014	Adopt(T)	2-1-2014	461-110-0530	1-1-2014	Amend	2-1-2014
443-003-0115	1-1-2014	Adopt(T)	2-1-2014	461-110-0530	7-1-2014	Amend	8-1-2014
443-003-0120	1-1-2014	Adopt(T)	2-1-2014	461-110-0530(T)	1-1-2014	Repeal	2-1-2014
443-003-0125	1-1-2014	Adopt(T)	2-1-2014	461-110-0630	1-1-2014	Amend	2-1-2014
459-001-0005	3-31-2014	Amend	5-1-2014	461-110-0630(T)	1-1-2014	Repeal	2-1-2014
459-001-0030	1-31-2014	Amend	3-1-2014	461-115-0016	1-1-2014	Amend(T)	2-1-2014
459-005-0220	3-31-2014	Amend	5-1-2014	461-115-0016	7-1-2014	Amend	8-1-2014
459-005-0510	3-31-2014	Adopt	5-1-2014	461-115-0030	1-1-2014	Amend	2-1-2014
459-005-0520	3-31-2014	Adopt	5-1-2014	461-115-0030	7-1-2014	Amend	8-1-2014
459-005-0525	1-31-2014	Amend	3-1-2014	461-115-0030(T)	1-1-2014	Repeal	2-1-2014
459-005-0545	1-31-2014	Amend	3-1-2014	461-115-0050	1-1-2014	Amend	2-1-2014
459-005-0610	11-22-2013	Amend	1-1-2014	461-115-0050	7-1-2014	Amend	8-1-2014
459-017-0060	1-31-2014	Amend	3-1-2014	461-115-0050(T)	1-1-2014	Repeal	2-1-2014
459-035-0001	3-31-2014	Amend	5-1-2014	461-115-0071	1-1-2014	Amend	2-1-2014
459-035-0050	3-31-2014	Amend	5-1-2014	461-115-0071(T)	1-1-2014	Repeal	2-1-2014
459-040-0060	11-22-2013	Amend	1-1-2014	461-115-0150	1-1-2014	Amend	2-1-2014
459-040-0070	11-22-2013	Amend	1-1-2014	461-115-0230	7-1-2014	Amend	8-1-2014
459-045-0010	11-22-2013	Amend	1-1-2014	461-115-0430	1-1-2014	Amend	2-1-2014
459-070-0100	1-31-2014	Amend	3-1-2014	461-115-0430	7-1-2014	Amend	8-1-2014
459-080-0500	1-31-2014	Amend	3-1-2014	461-115-0430(T)	1-1-2014	Repeal	2-1-2014
461-001-0000	1-1-2014	Amend	2-1-2014	461-115-0530	1-1-2014	Repeal	2-1-2014
461-001-0000	1-1-2014	Amend(T)	2-1-2014	461-115-0705	1-1-2014	Repeal	2-1-2014
461-001-0000	4-1-2014	Amend	5-1-2014	461-120-0010	7-1-2014	Amend	8-1-2014
461-001-0000	6-26-2014	Amend(T)	8-1-2014	461-120-0030	1-1-2014	Amend	2-1-2014
461-001-0000	7-1-2014	Amend	8-1-2014	461-120-0030	7-1-2014	Amend	8-1-2014
461-001-0000	7-1-2014	Amend(T)	8-1-2014	461-120-0030(T)	1-1-2014	Repeal	2-1-2014

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461-120-0050	7-1-2014	Amend	8-1-2014	461-135-0900(T)	1-1-2014	Repeal	2-1-2014
461-120-0050(T)	1-1-2014	Repeal	2-1-2014	461-135-0930	1-1-2014	Amend	2-1-2014
461-120-0125	1-1-2014	Amend	2-1-2014	461-135-0930(T)	1-1-2014	Repeal	2-1-2014
461-120-0125	7-1-2014	Amend	8-1-2014	461-135-0950	1-1-2014	Amend	2-1-2014
461-120-0125(T)	1-1-2014	Repeal	2-1-2014	461-135-0950	4-1-2014	Amend	5-1-2014
461-120-0210	1-1-2014	Amend	2-1-2014	461-135-0950(T)	1-1-2014	Repeal	2-1-2014
461-120-0210	7-1-2014	Amend	8-1-2014	461-135-0990	7-1-2014	Amend	8-1-2014
461-120-0210(T)	1-1-2014	Repeal	2-1-2014	461-135-1060	1-1-2014	Repeal	2-1-2014
461-120-0310	1-1-2014	Amend	2-1-2014	461-135-1070	1-1-2014	Amend	2-1-2014
461-120-0310(T)	1-1-2014	Repeal	2-1-2014	461-135-1070(T)	1-1-2014	Repeal	2-1-2014
461-120-0315	1-1-2014	Amend	2-1-2014	461-135-1100	1-1-2014	Repeal	2-1-2014
461-120-0315	7-1-2014	Amend	8-1-2014	461-135-1101	1-1-2014	Repeal	2-1-2014
461-120-0315(T)	1-1-2014	Repeal	2-1-2014	461-135-1102	1-1-2014	Repeal	2-1-2014
461-120-0330	1-1-2014	Amend	2-1-2014	461-135-1120	1-1-2014	Repeal	2-1-2014
461-120-0345	1-1-2014	Amend	2-1-2014	461-135-1125	1-1-2014	Repeal	2-1-2014
461-120-0345(T)	1-1-2014	Repeal	2-1-2014	461-135-1149	1-1-2014	Repeal	2-1-2014
461-120-0350	1-1-2014	Amend	2-1-2014	461-135-1260	6-26-2014	Amend(T)	8-1-2014
461-120-0350(T)	1-1-2014	Repeal	2-1-2014	461-140-0020	1-1-2014	Amend	2-1-2014
461-120-0510	1-1-2014	Amend	2-1-2014	461-140-0020	7-1-2014	Amend	8-1-2014
461-120-0510	7-1-2014	Amend	8-1-2014	461-140-0040	1-1-2014	Amend	2-1-2014
461-120-0510(T)	1-1-2014	Repeal	2-1-2014	461-140-0040	7-1-2014	Amend	8-1-2014
461-120-0630	1-1-2014	Amend	2-1-2014	461-140-0040(T)	1-1-2014	Repeal	2-1-2014
461-120-0630(T)	1-1-2014	Repeal	2-1-2014	461-140-0120	1-1-2014	Amend	2-1-2014
461-125-0150	1-1-2014	Amend	2-1-2014	461-140-0120(T)	1-1-2014	Repeal	2-1-2014
461-125-0150(T)	1-1-2014	Repeal	2-1-2014	461-140-0210	1-1-2014	Amend	2-1-2014
461-130-0328	1-1-2014	Amend	2-1-2014	461-140-0210(T)	1-1-2014	Repeal	2-1-2014
461-130-0328(T)	1-1-2014	Repeal	2-1-2014	461-140-0270	1-1-2014	Amend	2-1-2014
461-135-0010	1-1-2014	Amend	2-1-2014	461-140-0270(T)	1-1-2014	Repeal	2-1-2014
461-135-0010	7-1-2014	Amend	8-1-2014	461-140-0300	1-1-2014	Amend	2-1-2014
461-135-0010(T)	1-1-2014	Repeal	2-1-2014	461-145-0040	1-1-2014	Amend	2-1-2014
461-135-0070	1-1-2014	Amend	2-1-2014	461-145-0040(T)	1-1-2014	Repeal	2-1-2014
461-135-0070(T)	1-1-2014	Repeal	2-1-2014	461-145-0050	1-1-2014	Amend	2-1-2014
461-135-0080	1-1-2014	Amend	2-1-2014	461-145-0050(T)	1-1-2014	Repeal	2-1-2014
461-135-0080(T)	1-1-2014	Repeal	2-1-2014	461-145-0080	1-1-2014	Amend	2-1-2014
461-135-0095	1-1-2014	Repeal	2-1-2014	461-145-0080(T)	1-1-2014	Repeal	2-1-2014
461-135-0096	1-1-2014	Repeal	2-1-2014	461-145-0086	1-1-2014	Amend	2-1-2014
461-135-0150	7-1-2014	Repeal	8-1-2014	461-145-0086(T)	1-1-2014	Repeal	2-1-2014
461-135-0170	1-1-2014	Repeal	2-1-2014	461-145-0090	1-1-2014	Amend	2-1-2014
461-135-0405	4-10-2014	Amend(T)	5-1-2014	461-145-0090(T)	1-1-2014	Repeal	2-1-2014
461-135-0407	5-1-2014	Amend(T)	6-1-2014	461-145-0110	1-1-2014	Amend	2-1-2014
461-135-0505	1-1-2014	Amend	2-1-2014	461-145-0110(T)	1-1-2014	Repeal	2-1-2014
461-135-0505	1-1-2014	Amend(T)	2-1-2014	461-145-0120	1-1-2014	Amend	2-1-2014
461-135-0505	4-1-2014	Amend	5-1-2014	461-145-0120(T)	1-1-2014	Repeal	2-1-2014
461-135-0505(T)	4-1-2014	Repeal	5-1-2014	461-145-0130	1-1-2014	Amend	2-1-2014
461-135-0750	4-1-2014	Amend	5-1-2014	461-145-0130(T)	1-1-2014	Repeal	2-1-2014
461-135-0780	1-1-2014	Amend	2-1-2014	461-145-0150	1-1-2014	Amend	2-1-2014
461-135-0832	1-1-2014	Amend	2-1-2014	461-145-0150(T)	1-1-2014	Repeal	2-1-2014
461-135-0832	7-1-2014	Amend	8-1-2014	461-145-0220	1-1-2014	Amend	2-1-2014
461-135-0835	1-1-2014	Amend	2-1-2014	461-145-0220(T)	1-1-2014	Repeal	2-1-2014
461-135-0835	7-1-2014	Amend	8-1-2014	461-145-0230	1-1-2014	Amend	2-1-2014
461-135-0841	1-1-2014	Amend	2-1-2014	461-145-0230(T)	1-1-2014	Repeal	2-1-2014
461-135-0845	1-1-2014	Amend	2-1-2014	461-145-0250	1-1-2014	Amend	2-1-2014
461-135-0875	1-1-2014	Amend	2-1-2014	461-145-0250(T)	1-1-2014	Repeal	2-1-2014
461-135-0875	7-1-2014	Amend	8-1-2014	461-145-0280	1-1-2014	Amend(T)	2-1-2014
461-135-0875(T)	1-1-2014	Repeal	2-1-2014	461-145-0280	4-1-2014	Amend	5-1-2014

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461-145-0300	1-1-2014	Amend	2-1-2014	461-150-0020(T)	1-1-2014	Repeal	2-1-2014
461-145-0300(T)	1-1-2014	Repeal	2-1-2014	461-150-0055	1-1-2014	Repeal	2-1-2014
461-145-0330	1-1-2014	Amend	2-1-2014	461-150-0060	1-1-2014	Amend	2-1-2014
461-145-0330(T)	1-1-2014	Repeal	2-1-2014	461-150-0060(T)	1-1-2014	Repeal	2-1-2014
461-145-0340	1-1-2014	Amend	2-1-2014	461-150-0070	1-1-2014	Amend	2-1-2014
461-145-0340	7-1-2014	Amend	8-1-2014	461-150-0070(T)	1-1-2014	Repeal	2-1-2014
461-145-0340(T)	1-1-2014	Repeal	2-1-2014	461-150-0080	1-1-2014	Amend	2-1-2014
461-145-0360	1-1-2014	Amend	2-1-2014	461-150-0080(T)	1-1-2014	Repeal	2-1-2014
461-145-0360(T)	1-1-2014	Repeal	2-1-2014	461-150-0090	1-1-2014	Amend	2-1-2014
461-145-0365	1-1-2014	Amend	2-1-2014	461-150-0090(T)	1-1-2014	Repeal	2-1-2014
461-145-0365(T)	1-1-2014	Repeal	2-1-2014	461-155-0030	1-1-2014	Amend	2-1-2014
461-145-0380	1-1-2014	Amend	2-1-2014	461-155-0030(T)	1-1-2014	Repeal	2-1-2014
461-145-0380	7-1-2014	Amend	8-1-2014	461-155-0150	3-31-2014	Amend	5-1-2014
461-145-0380(T)	1-1-2014	Repeal	2-1-2014	461-155-0180	1-1-2014	Amend	2-1-2014
461-145-0410	1-1-2014	Amend	2-1-2014	461-155-0180	2-1-2014	Amend	3-1-2014
461-145-0410(T)	1-1-2014	Repeal	2-1-2014	461-155-0180(T)	1-1-2014	Repeal	2-1-2014
461-145-0420	1-1-2014	Amend	2-1-2014	461-155-0225	1-1-2014	Amend	2-1-2014
461-145-0420(T)	1-1-2014	Repeal	2-1-2014	461-155-0225(T)	1-1-2014	Repeal	2-1-2014
461-145-0430	1-1-2014	Amend	2-1-2014	461-155-0235	1-1-2014	Repeal	2-1-2014
461-145-0430(T)	1-1-2014	Repeal	2-1-2014	461-155-0250	1-1-2014	Amend	2-1-2014
461-145-0433	1-1-2014	Amend	2-1-2014	461-155-0250	7-1-2014	Amend(T)	8-1-2014
461-145-0433(T)	1-1-2014	Repeal	2-1-2014	461-155-0270	1-1-2014	Amend	2-1-2014
461-145-0440	1-1-2014	Amend	2-1-2014	461-155-0290	3-1-2014	Amend(T)	3-1-2014
461-145-0440(T)	1-1-2014	Repeal	2-1-2014	461-155-0290	3-7-2014	Amend	4-1-2014
461-145-0455	1-1-2014	Amend	2-1-2014	461-155-0290(T)	3-7-2014	Repeal	4-1-2014
461-145-0455(T)	1-1-2014	Repeal	2-1-2014	461-155-0291	3-1-2014	Amend(T)	3-1-2014
461-145-0460	1-1-2014	Amend	2-1-2014	461-155-0291	3-7-2014	Amend	4-1-2014
461-145-0460(T)	1-1-2014	Repeal	2-1-2014	461-155-0291(T)	3-7-2014	Repeal	4-1-2014
461-145-0470	1-1-2014	Amend	2-1-2014	461-155-0295	3-1-2014	Amend(T)	3-1-2014
461-145-0470(T)	1-1-2014	Repeal	2-1-2014	461-155-0295	3-7-2014	Amend	4-1-2014
461-145-0505	1-1-2014	Amend	2-1-2014	461-155-0295(T)	3-7-2014	Repeal	4-1-2014
461-145-0505(T)	1-1-2014	Repeal	2-1-2014	461-155-0300	1-1-2014	Amend	2-1-2014
461-145-0510	1-1-2014	Amend	2-1-2014	461-155-0350	1-1-2014	Amend	2-1-2014
461-145-0510(T)	1-1-2014	Repeal	2-1-2014	461-155-0350(T)	1-1-2014	Repeal	2-1-2014
461-145-0540	1-1-2014	Amend	2-1-2014	461-155-0360	7-1-2014	Amend	8-1-2014
461-145-0540(T)	1-1-2014	Repeal	2-1-2014	461-155-0670	1-1-2014	Amend	2-1-2014
461-145-0580	1-1-2014	Amend	2-1-2014	461-155-0670(T)	1-1-2014	Repeal	2-1-2014
461-145-0580(T)	1-1-2014	Repeal	2-1-2014	461-160-0015	1-1-2014	Amend	2-1-2014
461-145-0590	1-1-2014	Amend	2-1-2014	461-160-0015(T)	1-1-2014	Repeal	2-1-2014
461-145-0590(T)	1-1-2014	Repeal	2-1-2014	461-160-0040	1-1-2014	Amend	2-1-2014
461-145-0600	1-1-2014	Amend	2-1-2014	461-160-0040(T)	1-1-2014	Repeal	2-1-2014
461-145-0600(T)	1-1-2014	Repeal	2-1-2014	461-160-0060	1-1-2014	Amend	2-1-2014
461-145-0820	1-1-2014	Amend	2-1-2014	461-160-0060(T)	1-1-2014	Repeal	2-1-2014
461-145-0820(T)	1-1-2014	Repeal	2-1-2014	461-160-0100	1-1-2014	Amend	2-1-2014
461-145-0830	1-1-2014	Amend	2-1-2014	461-160-0100(T)	1-1-2014	Repeal	2-1-2014
461-145-0830(T)	1-1-2014	Repeal	2-1-2014	461-160-0120	1-1-2014	Repeal	2-1-2014
461-145-0860	1-1-2014	Amend	2-1-2014	461-160-0125	1-1-2014	Repeal	2-1-2014
461-145-0860(T)	1-1-2014	Repeal	2-1-2014	461-160-0160	1-1-2014	Amend	2-1-2014
461-145-0870	1-1-2014	Repeal	2-1-2014	461-160-0160(T)	1-1-2014	Repeal	2-1-2014
461-145-0910	1-1-2014	Amend	2-1-2014	461-160-0190	1-1-2014	Repeal	2-1-2014
461-145-0910(T)	1-1-2014	Repeal	2-1-2014	461-160-0200	1-1-2014	Repeal	2-1-2014
461-145-0920	1-1-2014	Amend	2-1-2014	461-160-0420	5-20-2014	Amend(T)	7-1-2014
461-145-0920(T)	1-1-2014	Repeal	2-1-2014	461-160-0550	7-1-2014	Amend	8-1-2014
461-145-0930	1-1-2014	Amend	2-1-2014	461-160-0551	7-1-2014	Amend	8-1-2014
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461-160-0620	7-1-2014	Amend	8-1-2014	461-180-0140(T)	1-1-2014	Repeal	2-1-2014
461-160-0620	7-1-2014	Amend(T)	8-1-2014	461-185-0050	1-1-2014	Amend	2-1-2014
461-160-0630	1-1-2014	Amend	2-1-2014	461-190-0211	3-5-2014	Amend(T)	4-1-2014
461-160-0630(T)	1-1-2014	Repeal	2-1-2014	461-190-0211	7-1-2014	Amend	8-1-2014
461-160-0700	1-1-2014	Repeal	2-1-2014	461-190-0211(T)	7-1-2014	Repeal	8-1-2014
461-160-0780	1-1-2014	Amend	2-1-2014	461-195-0301	1-1-2014	Amend	2-1-2014
461-165-0030	1-1-2014	Amend	2-1-2014	461-195-0310	1-1-2014	Amend	2-1-2014
461-165-0030(T)	1-1-2014	Repeal	2-1-2014	461-195-0501	4-1-2014	Amend	5-1-2014
461-165-0070	1-1-2014	Amend	2-1-2014	461-195-0501(T)	4-1-2014	Repeal	5-1-2014
461-165-0120	1-1-2014	Amend	2-1-2014	461-195-0521	4-1-2014	Amend	5-1-2014
461-165-0120(T)	1-1-2014	Repeal	2-1-2014	461-195-0521(T)	4-1-2014	Repeal	5-1-2014
461-165-0180	3-1-2014	Amend(T)	3-1-2014	461-195-0541	4-1-2014	Amend	5-1-2014
461-165-0180	4-1-2014	Amend(T)	5-1-2014	461-195-0541(T)	4-1-2014	Repeal	5-1-2014
461-165-0180	7-1-2014	Amend	8-1-2014	461-195-0551	1-1-2014	Amend	2-1-2014
461-165-0180(T)	4-1-2014	Suspend	5-1-2014	461-195-0561	4-1-2014	Amend	5-1-2014
461-165-0180(T)	7-1-2014	Repeal	8-1-2014	461-195-0561(T)	4-1-2014	Repeal	5-1-2014
461-170-0010	7-1-2014	Amend	8-1-2014	462-120-0050	6-30-2014	Amend(T)	8-1-2014
461-170-0011	1-1-2014	Amend	2-1-2014	462-120-0060	2-13-2014	Amend	3-1-2014
461-170-0011	6-26-2014	Amend(T)	8-1-2014	462-200-0635	2-13-2014	Adopt	3-1-2014
461-170-0011(T)	1-1-2014	Repeal	2-1-2014	471-020-0010	2-28-2014	Amend	4-1-2014
461-170-0130	1-1-2014	Amend	2-1-2014	471-020-0010(T)	2-28-2014	Repeal	4-1-2014
461-170-0130(T)	1-1-2014	Repeal	2-1-2014	471-020-0035	2-28-2014	Amend	4-1-2014
461-170-0200	1-1-2014	Amend	2-1-2014	471-020-0035(T)	2-28-2014	Repeal	4-1-2014
461-170-0200(T)	1-1-2014	Repeal	2-1-2014	471-030-0036	2-23-2014	Amend	2-1-2014
461-175-0200	1-1-2014	Amend	2-1-2014	471-030-0036	2-23-2014	Amend	2-1-2014
461-175-0200(T)	1-1-2014	Repeal	2-1-2014	471-030-0040	2-23-2014	Amend	2-1-2014
461-175-0203(T)	1-1-2014	Repeal	2-1-2014	471-030-0040	2-23-2014	Amend	2-1-2014
461-175-0206	1-1-2014	Amend	2-1-2014	471-030-0040(T)	2-23-2014	Repeal	2-1-2014
461-175-0210	1-1-2014	Amend	2-1-2014	471-030-0040(T)	2-23-2014	Repeal	2-1-2014
461-175-0210(T)	1-1-2014	Repeal	2-1-2014	471-030-0045	2-23-2014	Amend	2-1-2014
461-175-0230	4-1-2014	Amend	5-1-2014	471-030-0045	2-23-2014	Amend	2-1-2014
461-175-0270	1-1-2014	Amend	2-1-2014	471-030-0045(T)	2-23-2014	Repeal	2-1-2014
461-175-0270(T)	1-1-2014	Repeal	2-1-2014	471-030-0045(T)	2-23-2014	Repeal	2-1-2014
461-175-0305	1-1-2014	Amend	2-1-2014	471-030-0052	2-23-2014	Amend	2-1-2014
461-175-0305(T)	1-1-2014	Repeal	2-1-2014	471-030-0052	2-23-2014	Amend	2-1-2014
461-180-0010	1-1-2014	Amend	2-1-2014	471-030-0052(T)	2-23-2014	Repeal	2-1-2014
461-180-0010(T)	1-1-2014	Repeal	2-1-2014	471-030-0052(T)	2-23-2014	Repeal	2-1-2014
461-180-0020	1-1-2014	Amend	2-1-2014	471-030-0053	2-23-2014	Amend	2-1-2014
461-180-0020(T)	1-1-2014	Repeal	2-1-2014	471-030-0053	2-23-2014	Amend	2-1-2014
461-180-0050	1-1-2014	Amend	2-1-2014	471-030-0053(T)	2-23-2014	Repeal	2-1-2014
461-180-0050(T)	1-1-2014	Repeal	2-1-2014	471-030-0053(T)	2-23-2014	Repeal	2-1-2014
461-180-0065	1-1-2014	Amend	2-1-2014	471-030-0058	2-23-2014	Adopt	2-1-2014
461-180-0065(T)	1-1-2014	Repeal	2-1-2014	471-030-0058	2-23-2014	Adopt	2-1-2014
461-180-0085	1-1-2014	Amend	2-1-2014	471-030-0058(T)	2-23-2014	Repeal	2-1-2014
461-180-0085(T)	1-1-2014	Repeal	2-1-2014	471-030-0058(T)	2-23-2014	Repeal	2-1-2014
461-180-0090	1-1-2014	Amend	2-1-2014	471-030-0078	2-23-2014	Repeal	2-1-2014
461-180-0090	7-1-2014	Amend	8-1-2014	471-030-0078	2-23-2014	Repeal	2-1-2014
461-180-0090(T)	1-1-2014	Repeal	2-1-2014	471-030-0081	5-19-2014	Amend(T)	7-1-2014
461-180-0097(T)	1-1-2014	Repeal	2-1-2014	471-030-0082	5-19-2014	Amend(T)	7-1-2014
461-180-0100	1-1-2014	Amend	2-1-2014	471-030-0083	2-23-2014	Adopt	2-1-2014
461-180-0100(T)	1-1-2014	Repeal	2-1-2014	471-030-0083	2-23-2014	Adopt	2-1-2014
461-180-0105	1-1-2014	Amend	2-1-2014	471-030-0210	2-23-2014	Amend	2-1-2014
461-180-0105(T)	1-1-2014	Repeal	2-1-2014	471-030-0210	2-23-2014	Amend	2-1-2014
461-180-0120	1-1-2014	Amend	2-1-2014	471-031-0151	2-23-2014	Amend	2-1-2014



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571-021-0210	6-30-2014	Repeal	8-1-2014	571-100-0040	6-30-2014	Repeal	8-1-2014
571-021-0215	6-30-2014	Repeal	8-1-2014	571-100-0050	6-30-2014	Repeal	8-1-2014
571-021-0220	6-30-2014	Repeal	8-1-2014	571-100-0060	6-30-2014	Repeal	8-1-2014
571-021-0230	6-30-2014	Repeal	8-1-2014	571-100-0070	6-30-2014	Repeal	8-1-2014
571-021-0240	6-30-2014	Repeal	8-1-2014	571-100-0080	6-30-2014	Repeal	8-1-2014
571-021-0250	6-30-2014	Repeal	8-1-2014	571-100-0090	6-30-2014	Repeal	8-1-2014
571-022-0005	6-30-2014	Repeal	8-1-2014	571-100-0100	6-30-2014	Repeal	8-1-2014
571-022-0010	6-30-2014	Repeal	8-1-2014	571-100-0110	6-30-2014	Repeal	8-1-2014
571-022-0015	6-30-2014	Repeal	8-1-2014	571-100-0120	6-30-2014	Repeal	8-1-2014
571-022-0020	6-30-2014	Repeal	8-1-2014	571-100-0130	6-30-2014	Repeal	8-1-2014
571-022-0025	6-30-2014	Repeal	8-1-2014	571-100-0140	6-30-2014	Repeal	8-1-2014
571-022-0026	6-30-2014	Repeal	8-1-2014	571-100-0150	6-30-2014	Repeal	8-1-2014
571-022-0027	6-30-2014	Repeal	8-1-2014	571-100-0160	6-30-2014	Repeal	8-1-2014
571-022-0060	6-30-2014	Repeal	8-1-2014	573-040-0005	5-12-2014	Amend	6-1-2014
571-022-0065	6-30-2014	Repeal	8-1-2014	573-050-0025	7-2-2014	Amend	8-1-2014
571-022-0070	6-30-2014	Repeal	8-1-2014	573-076-0050	6-4-2014	Amend	7-1-2014
571-022-0080	6-30-2014	Repeal	8-1-2014	573-076-0060	6-4-2014	Amend	7-1-2014
571-022-0100	6-30-2014	Repeal	8-1-2014	573-076-0070	6-4-2014	Amend	7-1-2014
571-022-0105	6-30-2014	Repeal	8-1-2014	573-076-0080	6-4-2014	Amend	7-1-2014
571-023-0000	6-30-2014	Repeal	8-1-2014	573-076-0110	6-4-2014	Amend	7-1-2014
571-023-0005	6-30-2014	Repeal	8-1-2014	573-076-0120	6-4-2014	Amend	7-1-2014
571-023-0025	6-30-2014	Repeal	8-1-2014	573-076-0130	6-4-2014	Amend	7-1-2014
571-023-0100	6-30-2014	Repeal	8-1-2014	574-050-0005	1-28-2014	Amend	3-1-2014
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571-023-0120	6-30-2014	Repeal	8-1-2014	576-001-0020	6-30-2014	Repeal	8-1-2014
571-024-0005	6-30-2014	Repeal	8-1-2014	576-001-0030	6-30-2014	Repeal	8-1-2014
571-030-0005	6-30-2014	Repeal	8-1-2014	576-001-0040	6-30-2014	Repeal	8-1-2014
571-030-0010	6-30-2014	Repeal	8-1-2014	576-001-0045	6-30-2014	Repeal	8-1-2014
571-030-0015	6-30-2014	Repeal	8-1-2014	576-001-0050	6-30-2014	Repeal	8-1-2014
571-030-0020	6-30-2014	Repeal	8-1-2014	576-001-0055	6-30-2014	Repeal	8-1-2014
571-030-0025	6-30-2014	Repeal	8-1-2014	576-001-0060	6-30-2014	Repeal	8-1-2014
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571-030-0045	6-30-2014	Repeal	8-1-2014	576-002-0030	6-30-2014	Repeal	8-1-2014
571-030-0050	6-30-2014	Repeal	8-1-2014	576-002-0035	6-30-2014	Repeal	8-1-2014
571-050-0005	6-30-2014	Repeal	8-1-2014	576-002-0060	6-30-2014	Repeal	8-1-2014
571-050-0011	6-30-2014	Repeal	8-1-2014	576-002-0070	6-30-2014	Repeal	8-1-2014
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571-050-0025	6-30-2014	Repeal	8-1-2014	576-003-0005	6-30-2014	Repeal	8-1-2014
571-050-0030	6-30-2014	Repeal	8-1-2014	576-003-0010	6-30-2014	Repeal	8-1-2014
571-050-0035	6-30-2014	Repeal	8-1-2014	576-003-0020	6-30-2014	Repeal	8-1-2014
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571-051-0010	6-30-2014	Repeal	8-1-2014	576-003-0050	6-30-2014	Repeal	8-1-2014
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571-060-0010	6-30-2014	Repeal	8-1-2014	576-003-0070	6-30-2014	Repeal	8-1-2014
571-060-0015	6-30-2014	Repeal	8-1-2014	576-003-0080	6-30-2014	Repeal	8-1-2014
571-060-0020	6-30-2014	Repeal	8-1-2014	576-003-0090	6-30-2014	Repeal	8-1-2014
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571-060-0040	6-30-2014	Repeal	8-1-2014	576-003-0110	6-30-2014	Repeal	8-1-2014
571-100-0000	6-30-2014	Repeal	8-1-2014	576-003-0120	6-30-2014	Repeal	8-1-2014
571-100-0010	6-30-2014	Repeal	8-1-2014	576-004-0000	6-30-2014	Repeal	8-1-2014
571-100-0020	6-30-2014	Repeal	8-1-2014	576-004-0005	6-30-2014	Repeal	8-1-2014

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576-004-0020	6-30-2014	Repeal	8-1-2014	576-017-0005	6-30-2014	Repeal	8-1-2014
576-005-0005	2-11-2014	Amend(T)	3-1-2014	576-020-0005	6-30-2014	Repeal	8-1-2014
576-005-0005	6-30-2014	Repeal	8-1-2014	576-020-0010	4-16-2014	Amend(T)	5-1-2014
576-005-0010	2-11-2014	Amend(T)	3-1-2014	576-020-0010	6-30-2014	Repeal	8-1-2014
576-005-0010	6-30-2014	Repeal	8-1-2014	576-020-0015	6-30-2014	Repeal	8-1-2014
576-005-0015	6-30-2014	Repeal	8-1-2014	576-020-0020	6-30-2014	Repeal	8-1-2014
576-005-0020	2-11-2014	Amend(T)	3-1-2014	576-020-0025	6-30-2014	Repeal	8-1-2014
576-005-0020	6-30-2014	Repeal	8-1-2014	576-020-0030	6-30-2014	Repeal	8-1-2014
576-005-0025	2-11-2014	Amend(T)	3-1-2014	576-020-0035	6-30-2014	Repeal	8-1-2014
576-005-0025	6-30-2014	Repeal	8-1-2014	576-020-0040	6-30-2014	Repeal	8-1-2014
576-005-0030	6-30-2014	Repeal	8-1-2014	576-020-0045	6-30-2014	Repeal	8-1-2014
576-005-0032	2-11-2014	Amend(T)	3-1-2014	576-020-0050	6-30-2014	Repeal	8-1-2014
576-005-0032	6-30-2014	Repeal	8-1-2014	576-020-0055	6-30-2014	Repeal	8-1-2014
576-005-0041	2-11-2014	Amend(T)	3-1-2014	576-020-0060	6-30-2014	Repeal	8-1-2014
576-005-0041	6-30-2014	Repeal	8-1-2014	576-020-0065	6-30-2014	Repeal	8-1-2014
576-010-0000	12-18-2013	Amend	2-1-2014	576-022-0005	6-30-2014	Repeal	8-1-2014
576-010-0000	4-9-2014	Amend(T)	4-1-2014	576-022-0010	6-30-2014	Repeal	8-1-2014
576-010-0000	6-30-2014	Repeal	8-1-2014	576-022-0020	6-30-2014	Repeal	8-1-2014
576-010-0006	6-30-2014	Repeal	8-1-2014	576-022-0025	6-30-2014	Repeal	8-1-2014
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576-010-0031	6-30-2014	Repeal	8-1-2014	576-022-0045	6-30-2014	Repeal	8-1-2014
576-010-0036	6-30-2014	Repeal	8-1-2014	576-022-0050	6-30-2014	Repeal	8-1-2014
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576-012-0000	6-30-2014	Repeal	8-1-2014	576-023-0010	6-30-2014	Repeal	8-1-2014
576-015-0005	6-30-2014	Repeal	8-1-2014	576-023-0015	6-30-2014	Repeal	8-1-2014
576-015-0010	6-30-2014	Repeal	8-1-2014	576-023-0020	6-30-2014	Repeal	8-1-2014
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576-015-0021	6-30-2014	Repeal	8-1-2014	576-023-0030	6-30-2014	Repeal	8-1-2014
576-015-0025	6-30-2014	Repeal	8-1-2014	576-023-0035	6-30-2014	Repeal	8-1-2014
576-015-0030	6-30-2014	Repeal	8-1-2014	576-023-0040	6-30-2014	Repeal	8-1-2014
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576-015-0040	6-30-2014	Repeal	8-1-2014	576-025-0005	6-30-2014	Repeal	8-1-2014
576-015-0043	3-6-2014	Amend(T)	4-1-2014	576-025-0020	6-30-2014	Repeal	8-1-2014
576-015-0043	4-16-2014	Amend(T)	5-1-2014	576-030-0005	6-30-2014	Repeal	8-1-2014
576-015-0043	6-30-2014	Repeal	8-1-2014	576-030-0010	6-30-2014	Repeal	8-1-2014
576-015-0045	3-6-2014	Amend(T)	4-1-2014	576-030-0015	6-30-2014	Repeal	8-1-2014
576-015-0045	6-30-2014	Repeal	8-1-2014	576-030-0020	6-30-2014	Repeal	8-1-2014
576-015-0050	3-6-2014	Amend(T)	4-1-2014	576-030-0025	6-30-2014	Repeal	8-1-2014
576-015-0050	4-16-2014	Amend(T)	5-1-2014	576-030-0035	6-30-2014	Repeal	8-1-2014
576-015-0050	6-30-2014	Repeal	8-1-2014	576-030-0040	6-30-2014	Repeal	8-1-2014
576-015-0052	3-6-2014	Adopt(T)	4-1-2014	576-030-0045	6-30-2014	Repeal	8-1-2014
576-015-0052	6-30-2014	Repeal	8-1-2014	576-030-0050	6-30-2014	Repeal	8-1-2014
576-015-0055	6-30-2014	Repeal	8-1-2014	576-030-0055	6-30-2014	Repeal	8-1-2014
576-015-0056	3-6-2014	Amend(T)	4-1-2014	576-030-0060	6-30-2014	Repeal	8-1-2014
576-015-0056	6-30-2014	Repeal	8-1-2014	576-030-0070	6-30-2014	Repeal	8-1-2014
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576-015-0060	3-6-2014	Amend(T)	4-1-2014	576-035-0000	6-30-2014	Repeal	8-1-2014
576-015-0060	6-30-2014	Repeal	8-1-2014	576-035-0010	6-30-2014	Repeal	8-1-2014
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576-016-0040	6-30-2014	Repeal	8-1-2014	576-040-0015	6-30-2014	Repeal	8-1-2014
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576-050-0010	6-30-2014	Repeal	8-1-2014	576-080-0020	6-30-2014	Repeal	8-1-2014
576-050-0015	6-30-2014	Repeal	8-1-2014	576-080-0025	6-30-2014	Repeal	8-1-2014
576-050-0020	6-30-2014	Repeal	8-1-2014	576-080-0030	6-30-2014	Repeal	8-1-2014
576-050-0025	6-30-2014	Repeal	8-1-2014	576-080-0035	6-30-2014	Repeal	8-1-2014
576-050-0030	6-30-2014	Repeal	8-1-2014	576-080-0040	6-30-2014	Repeal	8-1-2014
576-050-0035	6-30-2014	Repeal	8-1-2014	576-080-0045	6-30-2014	Repeal	8-1-2014
576-050-0045	6-30-2014	Repeal	8-1-2014	577-050-0005	6-23-2014	Amend	8-1-2014
576-050-0050	6-30-2014	Repeal	8-1-2014	577-050-0010	6-23-2014	Amend	8-1-2014
576-050-0055	6-30-2014	Repeal	8-1-2014	577-050-0030	6-23-2014	Adopt	8-1-2014
576-055-0000	6-30-2014	Repeal	8-1-2014	577-050-0040	6-23-2014	Adopt	8-1-2014
576-055-0010	6-30-2014	Repeal	8-1-2014	577-050-0050	6-23-2014	Adopt	8-1-2014
576-055-0020	6-30-2014	Repeal	8-1-2014	577-050-0060	6-23-2014	Adopt	8-1-2014
576-055-0030	6-30-2014	Repeal	8-1-2014	577-050-0070	6-23-2014	Adopt	8-1-2014
576-055-0040	6-30-2014	Repeal	8-1-2014	577-060-0020	6-23-2014	Amend	8-1-2014
576-055-0050	6-30-2014	Repeal	8-1-2014	578-041-0030	9-15-2014	Amend	8-1-2014
576-055-0060	6-30-2014	Repeal	8-1-2014	578-041-0040	9-15-2014	Amend	8-1-2014
576-055-0070	6-30-2014	Repeal	8-1-2014	578-072-0020	9-15-2014	Amend	8-1-2014
576-055-0080	6-30-2014	Repeal	8-1-2014	578-072-0030	9-15-2014	Amend	8-1-2014
576-055-0090	6-30-2014	Repeal	8-1-2014	578-072-0040	9-15-2014	Amend	8-1-2014
576-055-0100	6-30-2014	Repeal	8-1-2014	578-072-0050	9-15-2014	Amend	8-1-2014
576-055-0110	6-30-2014	Repeal	8-1-2014	578-072-0060	9-15-2014	Amend	8-1-2014
576-055-0120	6-30-2014	Repeal	8-1-2014	578-072-0070	9-15-2014	Amend	8-1-2014
576-055-0130	6-30-2014	Repeal	8-1-2014	578-072-0080	9-15-2014	Amend	8-1-2014
576-055-0140	6-30-2014	Repeal	8-1-2014	579-020-0006	5-8-2014	Amend	6-1-2014
576-055-0150	6-30-2014	Repeal	8-1-2014	579-040-0005	12-6-2013	Amend	1-1-2014
576-055-0160	6-30-2014	Repeal	8-1-2014	579-040-0007	12-6-2013	Amend	1-1-2014
576-056-0000	6-30-2014	Repeal	8-1-2014	579-040-0010	12-6-2013	Amend	1-1-2014
576-056-0010	6-30-2014	Repeal	8-1-2014	579-040-0013	12-6-2013	Amend	1-1-2014
576-056-0020	6-30-2014	Repeal	8-1-2014	579-040-0015	12-6-2013	Amend	1-1-2014
576-056-0030	6-30-2014	Repeal	8-1-2014	579-040-0020	12-6-2013	Repeal	1-1-2014
576-056-0040	6-30-2014	Repeal	8-1-2014	579-040-0030	12-6-2013	Amend	1-1-2014
576-056-0050	6-30-2014	Repeal	8-1-2014	579-040-0035	12-6-2013	Amend	1-1-2014
576-056-0060	6-30-2014	Repeal	8-1-2014	579-040-0045	12-6-2013	Amend	1-1-2014
576-056-0070	6-30-2014	Repeal	8-1-2014	579-070-0010	12-6-2013	Amend	1-1-2014
576-056-0080	6-30-2014	Repeal	8-1-2014	579-070-0030	12-6-2013	Amend	1-1-2014
576-056-0090	6-30-2014	Repeal	8-1-2014	579-070-0035	12-6-2013	Amend	1-1-2014
576-056-0100	6-30-2014	Repeal	8-1-2014	579-070-0041	12-6-2013	Amend	1-1-2014
576-056-0110	6-30-2014	Repeal	8-1-2014	579-070-0042	12-6-2013	Amend	1-1-2014
576-056-0120	6-30-2014	Repeal	8-1-2014	579-070-0045	12-6-2013	Amend	1-1-2014
576-056-0130	6-30-2014	Repeal	8-1-2014	580-021-0030	11-20-2013	Amend(T)	1-1-2014
576-060-0010	6-30-2014	Repeal	8-1-2014	580-021-0030	3-21-2014	Amend	5-1-2014
576-060-0015	6-30-2014	Repeal	8-1-2014	580-040-0040	6-13-2014	Amend	7-1-2014
576-060-0020	6-30-2014	Repeal	8-1-2014	581-002-0200	6-27-2014	Adopt	8-1-2014
576-060-0025	6-30-2014	Repeal	8-1-2014	581-015-2000	12-18-2013	Amend	2-1-2014
576-060-0031	6-30-2014	Repeal	8-1-2014	581-015-2245	12-18-2013	Amend	2-1-2014
576-060-0035	6-30-2014	Repeal	8-1-2014	581-015-2540	12-18-2013	Amend	2-1-2014
576-060-0037	6-30-2014	Repeal	8-1-2014	581-015-2550	12-18-2013	Amend	2-1-2014
576-060-0038	6-30-2014	Repeal	8-1-2014	581-015-2555	12-18-2013	Amend	2-1-2014
576-060-0039	6-30-2014	Repeal	8-1-2014	581-015-2571	6-27-2014	Amend	8-1-2014
576-060-0040	6-30-2014	Repeal	8-1-2014	581-015-2572	6-3-2014	Amend	7-1-2014
576-065-0000	6-30-2014	Repeal	8-1-2014	581-015-2574	6-27-2014	Amend	8-1-2014
576-065-0010	6-30-2014	Repeal	8-1-2014	581-015-2930	12-18-2013	Adopt	2-1-2014
576-065-0020	6-30-2014	Repeal	8-1-2014	581-017-0005	12-18-2013	Adopt	2-1-2014

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581-017-0010	12-18-2013	Adopt	2-1-2014	581-018-0100	12-18-2013	Adopt	2-1-2014
581-017-0020	12-18-2013	Adopt	2-1-2014	581-018-0105	12-18-2013	Adopt	2-1-2014
581-017-0100	12-18-2013	Adopt	2-1-2014	581-018-0110	12-18-2013	Adopt	2-1-2014
581-017-0105	12-18-2013	Adopt	2-1-2014	581-018-0115	12-18-2013	Adopt	2-1-2014
581-017-0110	12-18-2013	Adopt	2-1-2014	581-018-0120	12-18-2013	Adopt	2-1-2014
581-017-0115	12-18-2013	Adopt	2-1-2014	581-018-0125	12-18-2013	Adopt	2-1-2014
581-017-0200	2-19-2014	Adopt	4-1-2014	581-018-0200	12-18-2013	Adopt	2-1-2014
581-017-0205	2-19-2014	Adopt	4-1-2014	581-018-0205	12-18-2013	Adopt	2-1-2014
581-017-0210	2-19-2014	Adopt	4-1-2014	581-018-0210	12-18-2013	Adopt	2-1-2014
581-017-0215	2-19-2014	Adopt	4-1-2014	581-018-0215	12-18-2013	Adopt	2-1-2014
581-017-0220	2-19-2014	Adopt	4-1-2014	581-018-0220	12-18-2013	Adopt	2-1-2014
581-017-0300	11-22-2013	Adopt(T)	1-1-2014	581-018-0225	12-18-2013	Adopt	2-1-2014
581-017-0301	6-24-2014	Adopt	8-1-2014	581-018-0250	12-18-2013	Adopt	2-1-2014
581-017-0305	11-22-2013	Adopt(T)	1-1-2014	581-018-0255	12-18-2013	Adopt	2-1-2014
581-017-0306	6-24-2014	Adopt	8-1-2014	581-018-0260	12-18-2013	Adopt	2-1-2014
581-017-0308	11-22-2013	Adopt(T)	1-1-2014	581-018-0265	12-18-2013	Adopt	2-1-2014
581-017-0309	6-24-2014	Adopt	8-1-2014	581-018-0270	12-18-2013	Adopt	2-1-2014
581-017-0311	11-22-2013	Adopt(T)	1-1-2014	581-018-0275	12-18-2013	Adopt	2-1-2014
581-017-0312	6-24-2014	Adopt	8-1-2014	581-018-0300	2-19-2014	Adopt	4-1-2014
581-017-0314	11-22-2013	Adopt(T)	1-1-2014	581-018-0305	2-19-2014	Adopt	4-1-2014
581-017-0315	6-24-2014	Adopt	8-1-2014	581-018-0310	2-19-2014	Adopt	4-1-2014
581-017-0317	11-22-2013	Adopt(T)	1-1-2014	581-018-0315	2-19-2014	Adopt	4-1-2014
581-017-0318	6-24-2014	Adopt	8-1-2014	581-018-0320	2-19-2014	Adopt	4-1-2014
581-017-0320	11-22-2013	Adopt(T)	1-1-2014	581-018-0325	2-19-2014	Adopt	4-1-2014
581-017-0321	6-24-2014	Adopt	8-1-2014	581-018-0327	2-19-2014	Adopt(T)	4-1-2014
581-017-0323	11-22-2013	Adopt(T)	1-1-2014	581-018-0327	6-24-2014	Adopt	8-1-2014
581-017-0324	6-24-2014	Adopt	8-1-2014	581-018-0330	2-19-2014	Adopt(T)	4-1-2014
581-017-0326	11-22-2013	Adopt(T)	1-1-2014	581-018-0330	6-24-2014	Adopt	8-1-2014
581-017-0327	6-24-2014	Adopt	8-1-2014	581-018-0333	2-19-2014	Adopt(T)	4-1-2014
581-017-0329	11-22-2013	Adopt(T)	1-1-2014	581-018-0333	6-24-2014	Adopt	8-1-2014
581-017-0330	6-24-2014	Adopt	8-1-2014	581-018-0336	2-19-2014	Adopt(T)	4-1-2014
581-017-0332	11-22-2013	Adopt(T)	1-1-2014	581-018-0336	6-24-2014	Adopt	8-1-2014
581-017-0333	6-24-2014	Adopt	8-1-2014	581-018-0380	11-22-2013	Adopt(T)	1-1-2014
581-017-0335	2-19-2014	Adopt(T)	4-1-2014	581-018-0381	6-24-2014	Adopt	8-1-2014
581-017-0335	6-24-2014	Adopt	8-1-2014	581-018-0385	11-22-2013	Adopt(T)	1-1-2014
581-017-0338	2-19-2014	Adopt(T)	4-1-2014	581-018-0386	6-24-2014	Adopt	8-1-2014
581-017-0338	6-24-2014	Adopt	8-1-2014	581-018-0390	11-22-2013	Adopt(T)	1-1-2014
581-017-0341	2-19-2014	Adopt(T)	4-1-2014	581-018-0391	6-24-2014	Adopt	8-1-2014
581-017-0341	6-24-2014	Adopt	8-1-2014	581-018-0394	6-24-2014	Adopt	8-1-2014
581-017-0344	2-19-2014	Adopt(T)	4-1-2014	581-018-0395	11-22-2013	Adopt(T)	1-1-2014
581-017-0344	6-24-2014	Adopt	8-1-2014	581-018-0396	6-24-2014	Adopt	8-1-2014
581-017-0347	2-19-2014	Adopt(T)	4-1-2014	581-018-0397	11-22-2013	Adopt(T)	1-1-2014
581-017-0347	6-24-2014	Adopt	8-1-2014	581-018-0398	6-24-2014	Adopt	8-1-2014
581-017-0350	2-19-2014	Adopt(T)	4-1-2014	581-018-0399	11-22-2013	Adopt(T)	1-1-2014
581-017-0350	6-24-2014	Adopt	8-1-2014	581-018-0400	11-22-2013	Adopt(T)	1-1-2014
581-017-0353	2-19-2014	Adopt(T)	4-1-2014	581-018-0401	6-24-2014	Adopt	8-1-2014
581-017-0353	6-24-2014	Adopt	8-1-2014	581-018-0405	11-22-2013	Adopt(T)	1-1-2014
581-017-0356	2-19-2014	Adopt(T)	4-1-2014	581-018-0406	6-24-2014	Adopt	8-1-2014
581-017-0356	6-24-2014	Adopt	8-1-2014	581-018-0410	11-22-2013	Adopt(T)	1-1-2014
581-017-0359	2-19-2014	Adopt(T)	4-1-2014	581-018-0411	6-24-2014	Adopt	8-1-2014
581-017-0359	6-24-2014	Adopt	8-1-2014	581-018-0415	11-22-2013	Adopt(T)	1-1-2014
581-017-0362	2-19-2014	Adopt(T)	4-1-2014	581-018-0416	6-24-2014	Adopt	8-1-2014
581-017-0362	6-24-2014	Adopt	8-1-2014	581-018-0420	11-22-2013	Adopt(T)	1-1-2014
581-018-0005	12-18-2013	Adopt	2-1-2014	581-018-0421	6-24-2014	Adopt	8-1-2014
581-018-0010	12-18-2013	Adopt	2-1-2014	581-018-0424	11-22-2013	Adopt(T)	1-1-2014
581-018-0020	12-18-2013	Adopt	2-1-2014	581-018-0425	6-24-2014	Adopt	8-1-2014

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581-018-0430	12-18-2013	Adopt(T)	2-1-2014	581-018-0575	6-24-2014	Adopt	8-1-2014
581-018-0431	6-24-2014	Adopt	8-1-2014	581-018-0578	3-28-2014	Adopt(T)	5-1-2014
581-018-0433	12-18-2013	Adopt(T)	2-1-2014	581-018-0578	6-24-2014	Adopt	8-1-2014
581-018-0434	6-24-2014	Adopt	8-1-2014	581-018-0581	3-28-2014	Adopt(T)	5-1-2014
581-018-0436	12-18-2013	Adopt(T)	2-1-2014	581-018-0581	6-24-2014	Adopt	8-1-2014
581-018-0437	6-24-2014	Adopt	8-1-2014	581-018-0584	3-28-2014	Adopt(T)	5-1-2014
581-018-0439	12-18-2013	Adopt(T)	2-1-2014	581-018-0584	6-24-2014	Adopt	8-1-2014
581-018-0440	6-24-2014	Adopt	8-1-2014	581-018-0587	3-28-2014	Adopt(T)	5-1-2014
581-018-0442	12-18-2013	Adopt(T)	2-1-2014	581-018-0587	6-24-2014	Adopt	8-1-2014
581-018-0443	6-24-2014	Adopt	8-1-2014	581-018-0590	3-28-2014	Adopt(T)	5-1-2014
581-018-0500	2-19-2014	Adopt(T)	4-1-2014	581-018-0590	6-24-2014	Adopt	8-1-2014
581-018-0500	6-24-2014	Adopt	8-1-2014	581-020-0301	2-19-2014	Am. & Ren.	4-1-2014
581-018-0503	2-19-2014	Adopt(T)	4-1-2014	581-020-0311	2-19-2014	Am. & Ren.	4-1-2014
581-018-0503	6-24-2014	Adopt	8-1-2014	581-020-0321	2-19-2014	Am. & Ren.	4-1-2014
581-018-0506	2-19-2014	Adopt(T)	4-1-2014	581-020-0331	2-19-2014	Am. & Ren.	4-1-2014
581-018-0506	6-24-2014	Adopt	8-1-2014	581-020-0334	2-19-2014	Am. & Ren.	4-1-2014
581-018-0509	2-19-2014	Adopt(T)	4-1-2014	581-020-0336	2-19-2014	Am. & Ren.	4-1-2014
581-018-0509	6-24-2014	Adopt	8-1-2014	581-020-0338	2-19-2014	Am. & Ren.	4-1-2014
581-018-0512	2-19-2014	Adopt(T)	4-1-2014	581-020-0341	2-19-2014	Repeal	4-1-2014
581-018-0512	6-24-2014	Adopt	8-1-2014	581-020-0342	2-19-2014	Am. & Ren.	4-1-2014
581-018-0515	2-19-2014	Adopt(T)	4-1-2014	581-020-0343	2-19-2014	Am. & Ren.	4-1-2014
581-018-0515	6-24-2014	Adopt	8-1-2014	581-020-0345	2-19-2014	Repeal	4-1-2014
581-018-0520	3-28-2014	Adopt(T)	5-1-2014	581-020-0359	12-18-2013	Amend	2-1-2014
581-018-0520	6-24-2014	Adopt	8-1-2014	581-020-0359	2-19-2014	Am. & Ren.	4-1-2014
581-018-0523	3-28-2014	Adopt(T)	5-1-2014	581-020-0361	2-19-2014	Am. & Ren.	4-1-2014
581-018-0523	6-24-2014	Adopt	8-1-2014	581-020-0380	2-19-2014	Am. & Ren.	4-1-2014
581-018-0526	3-28-2014	Adopt(T)	5-1-2014	581-020-0385	2-19-2014	Am. & Ren.	4-1-2014
581-018-0526	6-24-2014	Adopt	8-1-2014	581-020-0390	2-19-2014	Am. & Ren.	4-1-2014
581-018-0529	3-28-2014	Adopt(T)	5-1-2014	581-020-0395	2-19-2014	Am. & Ren.	4-1-2014
581-018-0529	6-24-2014	Adopt	8-1-2014	581-021-0019	7-1-2014	Amend	8-1-2014
581-018-0532	3-28-2014	Adopt(T)	5-1-2014	581-021-0031	3-12-2014	Adopt(T)	4-1-2014
581-018-0532	6-24-2014	Adopt	8-1-2014	581-021-0031	6-3-2014	Adopt	7-1-2014
581-018-0535	3-28-2014	Adopt(T)	5-1-2014	581-021-0037	6-3-2014	Amend	7-1-2014
581-018-0535	6-24-2014	Adopt	8-1-2014	581-021-0500	2-19-2014	Amend	4-1-2014
581-018-0540	2-19-2014	Adopt(T)	4-1-2014	581-021-0550	2-19-2014	Amend	4-1-2014
581-018-0540	3-4-2014	Adopt(T)	4-1-2014	581-021-0550	3-4-2014	Amend	4-1-2014
581-018-0540	6-24-2014	Adopt	8-1-2014	581-021-0553	2-19-2014	Amend	4-1-2014
581-018-0543	2-19-2014	Adopt(T)	4-1-2014	581-021-0553	3-4-2014	Amend	4-1-2014
581-018-0543	3-4-2014	Adopt(T)	4-1-2014	581-021-0556	2-19-2014	Amend	4-1-2014
581-018-0543	6-24-2014	Adopt	8-1-2014	581-021-0556	3-4-2014	Amend	4-1-2014
581-018-0546	2-19-2014	Adopt(T)	4-1-2014	581-021-0559	2-19-2014	Amend	4-1-2014
581-018-0546	3-4-2014	Adopt(T)	4-1-2014	581-021-0559	3-4-2014	Amend	4-1-2014
581-018-0546	6-24-2014	Adopt	8-1-2014	581-021-0563	2-19-2014	Amend	4-1-2014
581-018-0549	2-19-2014	Adopt(T)	4-1-2014	581-021-0563	3-4-2014	Amend	4-1-2014
581-018-0549	3-4-2014	Adopt(T)	4-1-2014	581-021-0566	2-19-2014	Amend	4-1-2014
581-018-0549	6-24-2014	Adopt	8-1-2014	581-021-0566	3-4-2014	Amend	4-1-2014
581-018-0552	2-19-2014	Adopt(T)	4-1-2014	581-021-0568	2-19-2014	Adopt	4-1-2014
581-018-0552	3-4-2014	Adopt(T)	4-1-2014	581-021-0568	3-4-2014	Amend	4-1-2014
581-018-0552	6-24-2014	Adopt	8-1-2014	581-021-0569	2-19-2014	Adopt	4-1-2014
581-018-0553	2-19-2014	Adopt(T)	4-1-2014	581-021-0569	3-4-2014	Amend	4-1-2014
581-018-0553	3-4-2014	Adopt(T)	4-1-2014	581-021-0570	2-19-2014	Adopt	4-1-2014
581-018-0553	6-24-2014	Adopt	8-1-2014	581-021-0570	3-4-2014	Amend	4-1-2014
581-018-0556	2-19-2014	Adopt(T)	4-1-2014	581-022-0606	12-18-2013	Amend	2-1-2014
581-018-0556	3-4-2014	Adopt(T)	4-1-2014	581-022-0610	6-24-2014	Amend	8-1-2014
581-018-0556	6-24-2014	Adopt	8-1-2014	581-023-0015	12-18-2013	Amend	2-1-2014
581-018-0575	3-28-2014	Adopt(T)	5-1-2014	581-023-0102	7-1-2014	Adopt	4-1-2014

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581-026-0005	2-19-2014	Adopt	4-1-2014	584-060-0530	3-15-2014	Adopt(T)	4-1-2014
581-026-0055	2-19-2014	Adopt	4-1-2014	584-066-0015	3-15-2014	Adopt	4-1-2014
581-026-0060	2-19-2014	Adopt	4-1-2014	584-066-0020	4-8-2014	Adopt(T)	5-1-2014
581-026-0110	2-19-2014	Adopt	4-1-2014	584-070-0012	3-15-2014	Amend(T)	4-1-2014
581-026-0125	2-19-2014	Adopt	4-1-2014	584-070-0211	3-15-2014	Amend	4-1-2014
581-026-0130	2-19-2014	Adopt	4-1-2014	584-070-0271	3-15-2014	Amend	4-1-2014
581-045-0001	4-23-2014	Am. & Ren.	6-1-2014	584-080-0008	3-15-2014	Amend(T)	4-1-2014
581-045-0003	4-23-2014	Am. & Ren.	6-1-2014	584-080-0012	3-15-2014	Amend	4-1-2014
581-045-0006	4-23-2014	Am. & Ren.	6-1-2014	584-080-0022	3-15-2014	Amend	4-1-2014
581-045-0007	4-23-2014	Am. & Ren.	6-1-2014	584-100-0061	3-15-2014	Amend(T)	4-1-2014
581-045-0008	4-23-2014	Am. & Ren.	6-1-2014	584-100-0066	3-15-2014	Amend(T)	4-1-2014
581-045-0009	4-23-2014	Am. & Ren.	6-1-2014	584-100-0071	3-15-2014	Amend(T)	4-1-2014
581-045-0012	4-23-2014	Am. & Ren.	6-1-2014	589-002-0120	12-16-2013	Amend(T)	2-1-2014
581-045-0013	4-23-2014	Am. & Ren.	6-1-2014	589-002-0120	3-20-2014	Amend	5-1-2014
581-045-0014	4-23-2014	Am. & Ren.	6-1-2014	589-006-0050	3-14-2014	Amend(T)	4-1-2014
581-045-0018	4-23-2014	Am. & Ren.	6-1-2014	589-006-0100	3-14-2014	Amend(T)	4-1-2014
581-045-0019	4-23-2014	Am. & Ren.	6-1-2014	589-006-0150	3-14-2014	Amend(T)	4-1-2014
581-045-0022	4-23-2014	Am. & Ren.	6-1-2014	589-006-0200	3-14-2014	Amend(T)	4-1-2014
581-045-0023	4-23-2014	Am. & Ren.	6-1-2014	589-006-0300	3-14-2014	Amend(T)	4-1-2014
581-045-0029	4-23-2014	Am. & Ren.	6-1-2014	589-006-0350	3-14-2014	Amend(T)	4-1-2014
581-045-0032	4-23-2014	Am. & Ren.	6-1-2014	589-006-0400	3-14-2014	Amend(T)	4-1-2014
581-045-0033	4-23-2014	Am. & Ren.	6-1-2014	589-007-0400	3-14-2014	Amend(T)	4-1-2014
581-045-0034	4-23-2014	Am. & Ren.	6-1-2014	589-007-0500	3-14-2014	Amend(T)	4-1-2014
581-045-0036	4-23-2014	Am. & Ren.	6-1-2014	589-008-0100	4-24-2014	Amend(T)	6-1-2014
581-045-0037	4-23-2014	Am. & Ren.	6-1-2014	603-052-0075	4-29-2014	Amend	6-1-2014
581-045-0038	4-23-2014	Am. & Ren.	6-1-2014	603-052-0120	4-29-2014	Amend	6-1-2014
581-045-0039	4-23-2014	Am. & Ren.	6-1-2014	603-052-0126	2-14-2014	Amend	3-1-2014
581-045-0060	4-23-2014	Am. & Ren.	6-1-2014	603-052-0127	2-14-2014	Amend	3-1-2014
581-045-0061	4-23-2014	Am. & Ren.	6-1-2014	603-052-0129	2-14-2014	Amend	3-1-2014
581-045-0062	4-23-2014	Am. & Ren.	6-1-2014	603-052-0150	2-14-2014	Amend	3-1-2014
581-045-0063	4-23-2014	Am. & Ren.	6-1-2014	603-052-0825	4-29-2014	Amend	6-1-2014
581-045-0064	4-23-2014	Am. & Ren.	6-1-2014	603-052-0882	7-7-2014	Amend(T)	8-1-2014
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629-048-0130	7-11-2014	Amend	8-1-2014	632-037-0100	4-2-2014	Amend	5-1-2014
629-048-0200	7-11-2014	Amend	8-1-2014	632-037-0105	4-2-2014	Amend	5-1-2014
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629-048-0310	7-11-2014	Amend	8-1-2014	632-037-0117	4-2-2014	Repeal	5-1-2014
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629-048-0500	7-11-2014	Amend	8-1-2014	632-037-0120	4-2-2014	Amend	5-1-2014
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629-060-0005	1-1-2014	Am. & Ren.	1-1-2014	632-037-0130	4-2-2014	Amend	5-1-2014
629-061-0000	1-1-2014	Am. & Ren.	1-1-2014	632-037-0135	4-2-2014	Amend	5-1-2014
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629-061-0015	1-1-2014	Am. & Ren.	1-1-2014	632-037-0145	4-2-2014	Amend	5-1-2014
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629-061-0045	1-1-2014	Repeal	1-1-2014	635-003-0003	6-24-2014	Amend	8-1-2014
629-061-0050	1-1-2014	Repeal	1-1-2014	635-003-0003(T)	6-10-2014	Repeal	7-1-2014
629-061-0060	1-1-2014	Am. & Ren.	1-1-2014	635-003-0003(T)	6-24-2014	Repeal	8-1-2014
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629-061-0075	1-1-2014	Repeal	1-1-2014	635-003-0077	6-24-2014	Amend	8-1-2014
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629-165-0210	1-1-2014	Adopt	1-1-2014	635-003-0085	6-24-2014	Amend	8-1-2014
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632-035-0035	4-2-2014	Amend	5-1-2014	635-004-0360	1-1-2014	Amend	2-1-2014
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632-037-0020	4-2-2014	Amend	5-1-2014	635-006-0232	1-13-2014	Amend	2-1-2014
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635-013-0007	6-24-2014	Amend	8-1-2014	635-023-0095(T)	5-1-2014	Suspend	5-1-2014
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635-014-0090	1-1-2014	Amend	2-1-2014	635-023-0095(T)	7-11-2014	Suspend	8-1-2014
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635-016-0090	1-1-2014	Amend	2-1-2014	635-023-0125	3-1-2014	Amend(T)	3-1-2014
635-017-0080	1-1-2014	Amend	2-1-2014	635-023-0125	4-4-2014	Amend(T)	5-1-2014
635-017-0090	1-1-2014	Amend	2-1-2014	635-023-0125	4-19-2014	Amend(T)	6-1-2014
635-017-0090	6-10-2014	Amend(T)	7-1-2014	635-023-0125	5-9-2014	Amend(T)	6-1-2014
635-017-0090	6-13-2014	Amend(T)	7-1-2014	635-023-0125	5-15-2014	Amend(T)	6-1-2014
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635-017-0090(T)	6-13-2014	Suspend	7-1-2014	635-023-0125(T)	4-4-2014	Suspend	5-1-2014
635-017-0090(T)	6-23-2014	Suspend	8-1-2014	635-023-0125(T)	4-19-2014	Suspend	6-1-2014
635-017-0095	1-1-2014	Amend	2-1-2014	635-023-0125(T)	5-9-2014	Suspend	6-1-2014
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635-018-0090	8-1-2014	Amend(T)	8-1-2014	635-023-0128	6-16-2014	Amend(T)	7-1-2014
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635-019-0090	5-31-2014	Amend(T)	7-1-2014	635-023-0128(T)	7-11-2014	Suspend	8-1-2014
635-019-0090	6-1-2014	Amend(T)	7-1-2014	635-023-0130	1-1-2014	Amend	2-1-2014
635-019-0090	6-18-2014	Amend(T)	8-1-2014	635-023-0134	1-1-2014	Amend	2-1-2014
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635-041-0065(T)	5-20-2014	Suspend	7-1-2014	635-050-0070	6-11-2014	Amend	7-1-2014
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635-041-0065(T)	6-3-2014	Suspend	7-1-2014	635-050-0090	6-11-2014	Amend	7-1-2014
635-041-0065(T)	6-10-2014	Suspend	7-1-2014	635-050-0100	6-11-2014	Amend	7-1-2014
635-041-0065(T)	6-16-2014	Suspend	7-1-2014	635-050-0110	6-11-2014	Amend	7-1-2014
635-041-0076	6-16-2014	Amend(T)	7-1-2014	635-050-0120	6-11-2014	Amend	7-1-2014
635-041-0076	6-30-2014	Amend(T)	8-1-2014	635-050-0130	6-11-2014	Amend	7-1-2014
635-041-0076	7-14-2014	Amend(T)	8-1-2014	635-050-0140	6-11-2014	Amend	7-1-2014
635-041-0076(T)	6-30-2014	Suspend	8-1-2014	635-050-0150	6-11-2014	Amend	7-1-2014
635-041-0076(T)	7-14-2014	Suspend	8-1-2014	635-050-0170	6-11-2014	Amend	7-1-2014
635-042-0022	4-1-2014	Amend(T)	5-1-2014	635-050-0180	6-11-2014	Amend	7-1-2014
635-042-0022	5-7-2014	Amend(T)	6-1-2014	635-050-0183	6-11-2014	Amend	7-1-2014
635-042-0022	5-20-2014	Amend(T)	6-1-2014	635-050-0189	6-11-2014	Amend	7-1-2014
635-042-0022	5-28-2014	Amend(T)	7-1-2014	635-054-0045	6-30-2014	Adopt(T)	8-1-2014
635-042-0022	6-4-2014	Amend(T)	7-1-2014	635-054-0050	6-30-2014	Adopt(T)	8-1-2014
635-042-0022(T)	5-7-2014	Suspend	6-1-2014	635-054-0055	6-30-2014	Adopt(T)	8-1-2014
635-042-0022(T)	5-20-2014	Suspend	6-1-2014	635-054-0060	6-30-2014	Adopt(T)	8-1-2014
635-042-0022(T)	5-28-2014	Suspend	7-1-2014	635-055-0002	3-11-2014	Amend	4-1-2014
635-042-0022(T)	6-4-2014	Suspend	7-1-2014	635-055-0030	3-11-2014	Amend	4-1-2014
635-042-0022(T)	6-16-2014	Suspend	7-1-2014	635-055-0035	3-11-2014	Amend	4-1-2014
635-042-0027	6-16-2014	Amend(T)	7-1-2014	635-055-0037	3-11-2014	Amend	4-1-2014
635-042-0027	7-7-2014	Amend(T)	8-1-2014	635-056-0000	3-11-2014	Amend	4-1-2014
635-042-0027	7-14-2014	Amend(T)	8-1-2014	635-056-0002	3-11-2014	Adopt	4-1-2014
635-042-0027(T)	7-7-2014	Suspend	8-1-2014	635-056-0050	3-11-2014	Amend	4-1-2014
635-042-0027(T)	7-14-2014	Suspend	8-1-2014	635-056-0060	3-11-2014	Amend	4-1-2014
635-042-0130	2-10-2014	Amend(T)	3-1-2014	635-056-0060	4-16-2014	Amend(T)	5-1-2014
635-042-0145	2-10-2014	Amend(T)	3-1-2014	635-056-0075	4-1-2014	Amend(T)	5-1-2014
635-042-0145	3-10-2014	Amend(T)	4-1-2014	635-056-0130	3-11-2014	Amend	4-1-2014
635-042-0145	3-17-2014	Amend(T)	4-1-2014	635-056-0140	3-11-2014	Amend	4-1-2014
635-042-0145	4-22-2014	Amend(T)	6-1-2014	635-056-0150	3-11-2014	Amend	4-1-2014
635-042-0145	4-24-2014	Amend(T)	6-1-2014	635-065-0001	12-20-2013	Amend	2-1-2014
635-042-0145	5-8-2014	Amend(T)	6-1-2014	635-065-0011	12-20-2013	Amend	2-1-2014
635-042-0145	5-20-2014	Amend(T)	6-1-2014	635-065-0015	12-20-2013	Amend	2-1-2014
635-042-0145	5-28-2014	Amend(T)	7-1-2014	635-065-0015	6-10-2014	Amend	7-1-2014
635-042-0145	6-4-2014	Amend(T)	7-1-2014	635-065-0090	12-20-2013	Amend	2-1-2014
635-042-0145(T)	3-10-2014	Suspend	4-1-2014	635-065-0401	12-20-2013	Amend	2-1-2014
635-042-0145(T)	3-17-2014	Suspend	4-1-2014	635-065-0501	12-20-2013	Amend	2-1-2014
635-042-0145(T)	4-22-2014	Suspend	6-1-2014	635-065-0705	12-20-2013	Amend	2-1-2014
635-042-0145(T)	4-24-2014	Suspend	6-1-2014	635-065-0740	12-20-2013	Amend	2-1-2014
635-042-0145(T)	5-8-2014	Suspend	6-1-2014	635-065-0760	12-20-2013	Amend	2-1-2014
635-042-0145(T)	5-20-2014	Suspend	6-1-2014	635-065-0765	12-20-2013	Amend	2-1-2014
635-042-0145(T)	5-28-2014	Suspend	7-1-2014	635-065-0772	3-13-2014	Amend(T)	4-1-2014
635-042-0145(T)	6-4-2014	Suspend	7-1-2014	635-065-0772	6-10-2014	Amend	7-1-2014
635-042-0160	2-10-2014	Amend(T)	3-1-2014	635-065-0772(T)	6-10-2014	Repeal	7-1-2014
635-042-0160	4-24-2014	Amend(T)	6-1-2014	635-066-0000	12-20-2013	Amend	2-1-2014
635-042-0160	5-8-2014	Amend(T)	6-1-2014	635-066-0010	12-20-2013	Amend	2-1-2014
635-042-0160(T)	4-24-2014	Suspend	6-1-2014	635-067-0000	12-20-2013	Amend	2-1-2014
635-042-0160(T)	5-8-2014	Suspend	6-1-2014	635-067-0000	6-10-2014	Amend	7-1-2014
635-042-0170	2-10-2014	Amend(T)	3-1-2014	635-067-0041	12-20-2013	Amend	2-1-2014
635-042-0170	4-24-2014	Amend(T)	6-1-2014	635-068-0000	2-27-2014	Amend	4-1-2014
635-042-0170	5-8-2014	Amend(T)	6-1-2014	635-068-0000	6-10-2014	Amend	7-1-2014
635-042-0170(T)	4-24-2014	Suspend	6-1-2014	635-069-0000	1-22-2014	Amend	3-1-2014

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635-070-0000	3-11-2014	Amend	4-1-2014	635-500-0500	6-24-2014	Amend	8-1-2014
635-070-0000	6-10-2014	Amend	7-1-2014	635-500-0505	6-10-2014	Repeal	7-1-2014
635-070-0020	2-12-2014	Amend(T)	3-1-2014	635-500-0505	6-24-2014	Repeal	8-1-2014
635-070-0020	3-11-2014	Amend	4-1-2014	635-500-0515	6-10-2014	Repeal	7-1-2014
635-070-0020	6-10-2014	Amend	7-1-2014	635-500-0515	6-24-2014	Repeal	8-1-2014
635-070-0020(T)	2-12-2014	Suspend	3-1-2014	635-500-0520	6-10-2014	Repeal	7-1-2014
635-071-0000	3-11-2014	Amend	4-1-2014	635-500-0520	6-24-2014	Repeal	8-1-2014
635-071-0000	6-10-2014	Amend	7-1-2014	635-500-0600	6-10-2014	Amend	7-1-2014
635-072-0000	12-20-2013	Amend	2-1-2014	635-500-0600	6-24-2014	Amend	8-1-2014
635-073-0000	1-22-2014	Amend	3-1-2014	635-500-0605	6-10-2014	Repeal	7-1-2014
635-073-0000	6-10-2014	Amend	7-1-2014	635-500-0605	6-24-2014	Repeal	8-1-2014
635-073-0000	7-7-2014	Amend(T)	8-1-2014	635-500-0610	6-10-2014	Repeal	7-1-2014
635-073-0015	6-10-2014	Amend	7-1-2014	635-500-0610	6-24-2014	Repeal	8-1-2014
635-075-0005	6-10-2014	Amend	7-1-2014	635-500-0620	6-10-2014	Repeal	7-1-2014
635-075-0010	6-10-2014	Amend	7-1-2014	635-500-0620	6-24-2014	Repeal	8-1-2014
635-075-0011	6-10-2014	Amend	7-1-2014	635-500-0625	6-10-2014	Repeal	7-1-2014
635-075-0020	6-10-2014	Amend	7-1-2014	635-500-0625	6-24-2014	Repeal	8-1-2014
635-095-0100	7-4-2014	Amend	7-1-2014	635-500-0630	6-10-2014	Repeal	7-1-2014
635-095-0105	7-4-2014	Amend	7-1-2014	635-500-0630	6-24-2014	Repeal	8-1-2014
635-095-0125	7-4-2014	Amend	7-1-2014	635-500-4010	6-10-2014	Amend	7-1-2014
635-095-0125	7-7-2014	Amend(T)	8-1-2014	635-500-4010	6-24-2014	Amend	8-1-2014
635-110-0000	1-14-2014	Amend	2-1-2014	635-500-4030	6-10-2014	Repeal	7-1-2014
635-110-0010	1-14-2014	Amend	2-1-2014	635-500-4030	6-24-2014	Repeal	8-1-2014
635-110-0010(T)	1-14-2014	Repeal	2-1-2014	635-500-4040	6-10-2014	Repeal	7-1-2014
635-110-0020	1-14-2014	Amend	2-1-2014	635-500-4040	6-24-2014	Repeal	8-1-2014
635-110-0030	1-14-2014	Amend	2-1-2014	635-500-4060	6-10-2014	Repeal	7-1-2014
635-200-0040	6-11-2014	Amend	7-1-2014	635-500-4060	6-24-2014	Repeal	8-1-2014
635-500-0130	6-10-2014	Repeal	7-1-2014	635-500-4070	6-10-2014	Repeal	7-1-2014
635-500-0130	6-24-2014	Repeal	8-1-2014	635-500-4070	6-24-2014	Repeal	8-1-2014
635-500-0135	6-10-2014	Repeal	7-1-2014	635-500-4310	6-10-2014	Amend	7-1-2014
635-500-0135	6-24-2014	Repeal	8-1-2014	635-500-4310	6-24-2014	Amend	8-1-2014
635-500-0140	6-10-2014	Repeal	7-1-2014	635-500-4330	6-10-2014	Repeal	7-1-2014
635-500-0140	6-24-2014	Repeal	8-1-2014	635-500-4330	6-24-2014	Repeal	8-1-2014
635-500-0145	6-10-2014	Repeal	7-1-2014	635-500-4340	6-10-2014	Repeal	7-1-2014
635-500-0145	6-24-2014	Repeal	8-1-2014	635-500-4340	6-24-2014	Repeal	8-1-2014
635-500-0150	6-10-2014	Repeal	7-1-2014	635-500-4350	6-10-2014	Repeal	7-1-2014
635-500-0150	6-24-2014	Repeal	8-1-2014	635-500-4350	6-24-2014	Repeal	8-1-2014
635-500-0175	6-10-2014	Repeal	7-1-2014	635-500-4370	6-10-2014	Repeal	7-1-2014
635-500-0175	6-24-2014	Repeal	8-1-2014	635-500-4370	6-24-2014	Repeal	8-1-2014
635-500-0200	6-10-2014	Amend	7-1-2014	635-500-4380	6-10-2014	Repeal	7-1-2014
635-500-0200	6-24-2014	Amend	8-1-2014	635-500-4380	6-24-2014	Repeal	8-1-2014
635-500-0385	6-10-2014	Amend	7-1-2014	635-500-4510	6-10-2014	Amend	7-1-2014
635-500-0385	6-24-2014	Amend	8-1-2014	635-500-4510	6-24-2014	Amend	8-1-2014
635-500-0390	6-10-2014	Repeal	7-1-2014	635-500-4530	6-10-2014	Repeal	7-1-2014
635-500-0390	6-24-2014	Repeal	8-1-2014	635-500-4530	6-24-2014	Repeal	8-1-2014
635-500-0400	6-10-2014	Repeal	7-1-2014	635-500-4540	6-10-2014	Repeal	7-1-2014
635-500-0400	6-24-2014	Repeal	8-1-2014	635-500-4540	6-24-2014	Repeal	8-1-2014
635-500-0405	6-10-2014	Repeal	7-1-2014	635-500-4550	6-10-2014	Repeal	7-1-2014
635-500-0405	6-24-2014	Repeal	8-1-2014	635-500-4550	6-24-2014	Repeal	8-1-2014
635-500-0415	6-10-2014	Repeal	7-1-2014	635-500-4560	6-10-2014	Repeal	7-1-2014
635-500-0415	6-24-2014	Repeal	8-1-2014	635-500-4560	6-24-2014	Repeal	8-1-2014
635-500-0420	6-10-2014	Repeal	7-1-2014	635-500-4580	6-10-2014	Repeal	7-1-2014
635-500-0420	6-24-2014	Repeal	8-1-2014	635-500-4580	6-24-2014	Repeal	8-1-2014
635-500-0425	6-10-2014	Repeal	7-1-2014	635-500-4590	6-10-2014	Repeal	7-1-2014
635-500-0425	6-24-2014	Repeal	8-1-2014	635-500-4590	6-24-2014	Repeal	8-1-2014

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635-500-4600	6-24-2014	Repeal	8-1-2014	655-015-0020	5-6-2014	Amend	6-1-2014
635-500-4810	6-10-2014	Amend	7-1-2014	656-030-0020	1-24-2014	Amend	3-1-2014
635-500-4810	6-24-2014	Amend	8-1-2014	656-030-0040	1-24-2014	Amend	3-1-2014
635-500-4830	6-10-2014	Repeal	7-1-2014	656-040-0010	1-24-2014	Amend	3-1-2014
635-500-4830	6-24-2014	Repeal	8-1-2014	660-006-0025	1-1-2014	Amend	2-1-2014
635-500-4840	6-10-2014	Repeal	7-1-2014	660-006-0026	1-1-2014	Amend	2-1-2014
635-500-4840	6-24-2014	Repeal	8-1-2014	660-006-0055	1-1-2014	Amend	2-1-2014
635-500-4850	6-10-2014	Repeal	7-1-2014	660-018-0020	1-1-2014	Amend	2-1-2014
635-500-4850	6-24-2014	Repeal	8-1-2014	660-018-0040	1-1-2014	Amend	2-1-2014
635-500-4860	6-10-2014	Repeal	7-1-2014	660-033-0030	1-1-2014	Amend	2-1-2014
635-500-4860	6-24-2014	Repeal	8-1-2014	660-033-0120	1-1-2014	Amend	2-1-2014
635-500-4880	6-10-2014	Repeal	7-1-2014	660-033-0130	1-1-2014	Amend	2-1-2014
635-500-4880	6-24-2014	Repeal	8-1-2014	660-033-0140	1-1-2014	Amend	2-1-2014
635-500-4890	6-10-2014	Repeal	7-1-2014	661-010-0000	2-26-2014	Amend	4-1-2014
635-500-4890	6-24-2014	Repeal	8-1-2014	661-010-0021	1-1-2014	Amend	2-1-2014
635-500-5010	6-10-2014	Amend	7-1-2014	661-010-0025	1-1-2014	Amend	2-1-2014
635-500-5010	6-24-2014	Amend	8-1-2014	661-010-0030	1-1-2014	Amend	2-1-2014
635-500-5030	6-10-2014	Repeal	7-1-2014	661-010-0050	1-1-2014	Amend	2-1-2014
635-500-5030	6-24-2014	Repeal	8-1-2014	661-010-0067	1-1-2014	Amend	2-1-2014
635-500-5040	6-10-2014	Repeal	7-1-2014	661-010-0071	1-1-2014	Amend	2-1-2014
635-500-5040	6-24-2014	Repeal	8-1-2014	661-010-0073	1-1-2014	Amend	2-1-2014
635-500-5050	6-10-2014	Repeal	7-1-2014	661-010-0075	1-1-2014	Amend	2-1-2014
635-500-5050	6-24-2014	Repeal	8-1-2014	690-022-0020	4-1-2014	Adopt(T)	5-1-2014
635-500-5070	6-10-2014	Repeal	7-1-2014	690-022-0025	4-1-2014	Adopt(T)	5-1-2014
635-500-5070	6-24-2014	Repeal	8-1-2014	690-022-0030	4-1-2014	Adopt(T)	5-1-2014
635-500-5080	6-10-2014	Repeal	7-1-2014	710-001-0000	2-11-2014	Adopt	3-1-2014
635-500-5080	6-24-2014	Repeal	8-1-2014	710-001-0005	2-11-2014	Adopt	3-1-2014
635-500-5210	6-10-2014	Amend	7-1-2014	710-005-0005	2-11-2014	Adopt	3-1-2014
635-500-5210	6-24-2014	Amend	8-1-2014	710-010-0000	7-1-2014	Adopt(T)	8-1-2014
635-500-5230	6-10-2014	Repeal	7-1-2014	715-001-0020	2-19-2014	Adopt(T)	4-1-2014
635-500-5230	6-24-2014	Repeal	8-1-2014	715-001-0025	2-19-2014	Adopt(T)	4-1-2014
635-500-5240	6-10-2014	Repeal	7-1-2014	715-013-0010	6-25-2014	Adopt(T)	8-1-2014
635-500-5240	6-24-2014	Repeal	8-1-2014	715-013-0050	6-25-2014	Adopt(T)	8-1-2014
635-500-5250	6-10-2014	Repeal	7-1-2014	715-013-0055	6-25-2014	Adopt(T)	8-1-2014
635-500-5250	6-24-2014	Repeal	8-1-2014	731-012-0030	4-23-2014	Amend	6-1-2014
635-500-5270	6-10-2014	Repeal	7-1-2014	731-012-0030	7-10-2014	Amend	8-1-2014
635-500-5270	6-24-2014	Repeal	8-1-2014	731-035-0010	12-20-2013	Amend	2-1-2014
635-500-5280	6-10-2014	Repeal	7-1-2014	731-035-0020	12-20-2013	Amend	2-1-2014
635-500-5280	6-24-2014	Repeal	8-1-2014	731-035-0050	12-20-2013	Amend	2-1-2014
635-500-5290	6-10-2014	Repeal	7-1-2014	731-035-0060	12-20-2013	Amend	2-1-2014
635-500-5290	6-24-2014	Repeal	8-1-2014	731-035-0080	12-20-2013	Amend	2-1-2014
635-500-5400	6-10-2014	Repeal	7-1-2014	731-147-0010	1-1-2014	Amend	2-1-2014
635-500-5400	6-24-2014	Repeal	8-1-2014	731-147-0040	1-1-2014	Amend	2-1-2014
635-500-6775	6-10-2014	Adopt	7-1-2014	731-149-0010	1-1-2014	Amend	2-1-2014
635-500-6775	6-24-2014	Adopt	8-1-2014	734-020-0010	2-21-2014	Amend	4-1-2014
642-010-0010	7-1-2014	Amend	5-1-2014	734-026-0010	11-25-2013	Amend	1-1-2014
644-010-0005	7-1-2014	Amend	8-1-2014	734-026-0020	11-25-2013	Amend	1-1-2014
644-010-0010	7-1-2014	Amend	8-1-2014	734-026-0030	11-25-2013	Amend	1-1-2014
644-010-0015	7-1-2014	Amend	8-1-2014	734-035-0010	6-25-2014	Amend(T)	8-1-2014
644-010-0020	7-1-2014	Amend	8-1-2014	734-035-0010	7-10-2014	Amend(T)	8-1-2014
644-010-0025	7-1-2014	Amend	8-1-2014	734-035-0200	6-25-2014	Adopt(T)	8-1-2014
644-030-0020	7-1-2014	Amend	8-1-2014	734-035-0200	7-9-2014	Adopt(T)	8-1-2014
646-010-0020	5-5-2014	Amend	6-1-2014	734-051-1030	6-30-2014	Amend	8-1-2014
646-030-0020	5-5-2014	Amend	6-1-2014	734-051-1030	7-9-2014	Amend	8-1-2014
646-040-0000	5-5-2014	Amend	6-1-2014	734-051-1040	6-30-2014	Amend	8-1-2014

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734-051-1065	6-30-2014	Adopt	8-1-2014	735-022-0010	5-19-2014	Repeal	7-1-2014
734-051-1065	7-9-2014	Adopt	8-1-2014	735-022-0030	5-19-2014	Amend	7-1-2014
734-051-1070	6-30-2014	Amend	8-1-2014	735-022-0050	5-19-2014	Amend	7-1-2014
734-051-1070	7-9-2014	Amend	8-1-2014	735-022-0060	5-19-2014	Amend	7-1-2014
734-051-2010	6-30-2014	Amend	8-1-2014	735-022-0090	5-19-2014	Amend	7-1-2014
734-051-2010	7-9-2014	Amend	8-1-2014	735-028-0000	4-1-2014	Amend(T)	5-1-2014
734-051-2020	6-30-2014	Amend	8-1-2014	735-028-0000	6-24-2014	Amend	8-1-2014
734-051-2020	7-9-2014	Amend	8-1-2014	735-028-0000	7-9-2014	Amend	8-1-2014
734-051-3010	6-30-2014	Amend	8-1-2014	735-028-0005	4-1-2014	Adopt(T)	5-1-2014
734-051-3010	7-9-2014	Amend	8-1-2014	735-028-0005	6-24-2014	Adopt	8-1-2014
734-051-3015	6-30-2014	Adopt	8-1-2014	735-028-0005	7-9-2014	Adopt	8-1-2014
734-051-3015	7-9-2014	Adopt	8-1-2014	735-028-0040	4-1-2014	Amend(T)	5-1-2014
734-051-3020	6-30-2014	Amend	8-1-2014	735-028-0040	6-24-2014	Amend	8-1-2014
734-051-3020	7-9-2014	Amend	8-1-2014	735-028-0040	7-9-2014	Amend	8-1-2014
734-051-3040	6-30-2014	Amend	8-1-2014	735-046-0000	5-19-2014	Amend	7-1-2014
734-051-3040	7-9-2014	Amend	8-1-2014	735-050-0120	11-25-2013	Amend	1-1-2014
734-051-3050	6-30-2014	Amend	8-1-2014	735-050-0120(T)	11-25-2013	Repeal	1-1-2014
734-051-3050	7-9-2014	Amend	8-1-2014	735-062-0007	1-1-2014	Amend	2-1-2014
734-051-3060	6-30-2014	Amend	8-1-2014	735-062-0010	1-1-2014	Amend	2-1-2014
734-051-3060	7-9-2014	Amend	8-1-2014	735-062-0385	1-1-2014	Amend	2-1-2014
734-051-3070	6-30-2014	Amend	8-1-2014	735-064-0070	1-1-2014	Amend	2-1-2014
734-051-3070	7-9-2014	Amend	8-1-2014	735-070-0082	1-1-2014	Adopt	2-1-2014
734-051-4020	6-30-2014	Amend	8-1-2014	735-070-0085	11-25-2013	Amend	1-1-2014
734-051-4020	7-9-2014	Amend	8-1-2014	735-070-0085(T)	11-25-2013	Repeal	1-1-2014
734-051-5060	6-30-2014	Amend	8-1-2014	735-070-0185	1-1-2014	Amend	2-1-2014
734-051-5060	7-9-2014	Amend	8-1-2014	735-070-0190	1-1-2014	Amend	2-1-2014
734-051-5120	6-30-2014	Amend	8-1-2014	735-072-0035	1-1-2014	Amend	2-1-2014
734-051-5120	7-9-2014	Amend	8-1-2014	735-150-0037	5-19-2014	Amend(T)	7-1-2014
734-051-7010	6-30-2014	Amend	8-1-2014	735-150-0045	1-1-2014	Amend	2-1-2014
734-051-7010	7-9-2014	Amend	8-1-2014	735-150-0105	1-1-2014	Amend	2-1-2014
734-051-8010	1-1-2014	Adopt(T)	2-1-2014	735-150-0140	5-19-2014	Amend	7-1-2014
734-051-8010(T)	6-30-2014	Repeal	8-1-2014	735-152-0037	1-1-2014	Amend	2-1-2014
734-051-8010(T)	7-9-2014	Repeal	8-1-2014	736-010-0040	3-6-2014	Amend	4-1-2014
734-051-8015	1-1-2014	Adopt(T)	2-1-2014	736-040-0065	7-1-2014	Amend	8-1-2014
734-051-8015(T)	6-30-2014	Repeal	8-1-2014	736-040-0070	7-1-2014	Amend	8-1-2014
734-051-8015(T)	7-9-2014	Repeal	8-1-2014	737-015-0010	3-1-2014	Amend	3-1-2014
734-051-8020	1-1-2014	Adopt(T)	2-1-2014	737-015-0020	3-1-2014	Amend	3-1-2014
734-051-8020(T)	6-30-2014	Repeal	8-1-2014	737-015-0030	3-1-2014	Amend	3-1-2014
734-051-8020(T)	7-9-2014	Repeal	8-1-2014	737-015-0035	3-1-2014	Adopt	3-1-2014
734-051-8025	1-1-2014	Adopt(T)	2-1-2014	737-015-0070	3-1-2014	Amend	3-1-2014
734-051-8025(T)	6-30-2014	Repeal	8-1-2014	737-015-0074	3-1-2014	Adopt	3-1-2014
734-051-8025(T)	7-9-2014	Repeal	8-1-2014	737-015-0076	3-1-2014	Adopt	3-1-2014
734-051-8030	1-1-2014	Adopt(T)	2-1-2014	737-015-0085	3-1-2014	Adopt	3-1-2014
734-051-8030(T)	6-30-2014	Repeal	8-1-2014	737-015-0090	3-1-2014	Amend	3-1-2014
734-051-8030(T)	7-9-2014	Repeal	8-1-2014	737-015-0100	3-1-2014	Amend	3-1-2014
734-055-0017	11-25-2013	Repeal	1-1-2014	737-015-0105	3-1-2014	Adopt	3-1-2014
735-010-0250	12-20-2013	Adopt	2-1-2014	737-015-0110	3-1-2014	Amend	3-1-2014
735-018-0010	12-20-2013	Amend	2-1-2014	737-015-0120	3-1-2014	Adopt	3-1-2014
735-018-0010	3-25-2014	Amend	5-1-2014	737-015-0130	3-1-2014	Adopt	3-1-2014
735-018-0020	3-25-2014	Amend	5-1-2014	737-025-0010	2-26-2014	Amend	4-1-2014
735-018-0050	3-25-2014	Amend	5-1-2014	740-100-0010	4-23-2014	Amend	6-1-2014
735-018-0070	3-25-2014	Amend	5-1-2014	740-100-0010	7-10-2014	Amend	8-1-2014
735-018-0080	3-25-2014	Amend	5-1-2014	740-100-0065	4-23-2014	Amend	6-1-2014
735-018-0130	12-20-2013	Adopt	2-1-2014	740-100-0065	7-10-2014	Amend	8-1-2014
735-020-0010	5-19-2014	Amend	7-1-2014	740-100-0070	4-23-2014	Amend	6-1-2014

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740-100-0080	4-23-2014	Amend	6-1-2014	812-003-0131	1-1-2014	Amend	2-1-2014
740-100-0080	7-10-2014	Amend	8-1-2014	812-003-0140	1-1-2014	Repeal	2-1-2014
740-100-0085	4-23-2014	Amend	6-1-2014	812-003-0141	1-1-2014	Repeal	2-1-2014
740-100-0085	7-10-2014	Amend	8-1-2014	812-003-0142	5-5-2014	Adopt(T)	6-1-2014
740-100-0090	4-23-2014	Amend	6-1-2014	812-003-0142	7-1-2014	Adopt	8-1-2014
740-100-0090	7-10-2014	Amend	8-1-2014	812-003-0142(T)	7-1-2014	Repeal	8-1-2014
740-110-0010	4-23-2014	Amend	6-1-2014	812-003-0150	1-1-2014	Repeal	2-1-2014
740-110-0010	7-10-2014	Amend	8-1-2014	812-003-0152	1-1-2014	Amend	2-1-2014
740-200-0010	1-1-2014	Amend	2-1-2014	812-003-0153	1-1-2014	Amend	2-1-2014
740-200-0020	1-1-2014	Amend	2-1-2014	812-003-0160	4-30-2014	Amend	6-1-2014
740-200-0040	1-1-2014	Amend	2-1-2014	812-003-0170	1-1-2014	Repeal	2-1-2014
741-040-0040	12-20-2013	Amend	2-1-2014	812-003-0171	1-1-2014	Amend	2-1-2014
800-010-0020	2-1-2014	Amend	3-1-2014	812-003-0175	1-1-2014	Amend	2-1-2014
800-010-0025	2-1-2014	Amend	3-1-2014	812-003-0180	1-1-2014	Amend	2-1-2014
800-010-0040	2-1-2014	Amend	3-1-2014	812-003-0190	4-30-2014	Amend	6-1-2014
800-010-0041	2-1-2014	Amend	3-1-2014	812-003-0220	1-1-2014	Repeal	2-1-2014
800-010-0050	2-1-2014	Amend	3-1-2014	812-003-0221	1-1-2014	Amend	2-1-2014
800-015-0015	2-1-2014	Amend	3-1-2014	812-003-0240	1-1-2014	Amend	2-1-2014
800-020-0025	2-1-2014	Amend	3-1-2014	812-003-0250	1-1-2014	Amend	2-1-2014
800-020-0065	2-1-2014	Amend	3-1-2014	812-003-0260	1-1-2014	Amend	2-1-2014
800-025-0020	2-1-2014	Amend	3-1-2014	812-003-0260	4-30-2014	Amend	6-1-2014
800-025-0040	2-1-2014	Amend	3-1-2014	812-003-0260	5-5-2014	Amend(T)	6-1-2014
800-025-0060	2-1-2014	Amend	3-1-2014	812-003-0260	7-1-2014	Amend	8-1-2014
801-001-0035	3-1-2014	Amend	3-1-2014	812-003-0260(T)	7-1-2014	Repeal	8-1-2014
801-010-0050	3-1-2014	Amend	3-1-2014	812-003-0290	1-1-2014	Amend	2-1-2014
801-010-0085	3-1-2014	Amend	3-1-2014	812-003-0310	1-1-2014	Amend	2-1-2014
804-003-0000	12-12-2013	Amend	1-1-2014	812-003-0320	1-1-2014	Amend	2-1-2014
804-022-0005	12-12-2013	Amend	1-1-2014	812-003-0340	5-5-2014	Amend(T)	6-1-2014
804-022-0010	12-12-2013	Amend	1-1-2014	812-003-0340	7-1-2014	Amend	8-1-2014
804-025-0010	12-12-2013	Amend	1-1-2014	812-003-0340(T)	7-1-2014	Repeal	8-1-2014
806-010-0035	1-1-2014	Amend	2-1-2014	812-003-0350	5-5-2014	Amend(T)	6-1-2014
806-010-0045	1-1-2014	Amend	2-1-2014	812-003-0350	7-1-2014	Amend	8-1-2014
806-010-0060	5-22-2014	Amend	7-1-2014	812-003-0350(T)	7-1-2014	Repeal	8-1-2014
806-010-0105	4-24-2014	Amend	6-1-2014	812-003-0360	5-5-2014	Amend(T)	6-1-2014
806-010-0145	4-24-2014	Amend	6-1-2014	812-003-0360	7-1-2014	Amend	8-1-2014
808-001-0020	4-1-2014	Amend(T)	5-1-2014	812-003-0360(T)	7-1-2014	Repeal	8-1-2014
808-002-0240	2-1-2014	Amend	3-1-2014	812-003-0370	5-5-2014	Amend(T)	6-1-2014
808-002-0330	4-1-2014	Amend(T)	5-1-2014	812-003-0370	7-1-2014	Amend	8-1-2014
808-002-0360	6-1-2014	Amend	7-1-2014	812-003-0370(T)	7-1-2014	Repeal	8-1-2014
808-003-0035	3-1-2014	Amend	4-1-2014	812-003-0380	5-5-2014	Amend(T)	6-1-2014
808-003-0040	3-1-2014	Amend	4-1-2014	812-003-0380	7-1-2014	Amend	8-1-2014
808-003-0040	3-1-2014	Amend(T)	4-1-2014	812-003-0380(T)	7-1-2014	Repeal	8-1-2014
808-003-0045	3-1-2014	Amend	4-1-2014	812-003-0390	1-1-2014	Amend	2-1-2014
808-003-0045	3-1-2014	Amend(T)	4-1-2014	812-003-0390	4-30-2014	Amend	6-1-2014
808-003-0060	3-1-2014	Amend	4-1-2014	812-003-0400	1-1-2014	Amend	2-1-2014
808-003-0065	3-1-2014	Amend(T)	4-1-2014	812-003-0430	1-1-2014	Amend	2-1-2014
808-009-0315	6-1-2014	Adopt	7-1-2014	812-003-0440	1-1-2014	Amend	2-1-2014
811-015-0005	11-27-2013	Amend	1-1-2014	812-005-0200	4-30-2014	Amend	6-1-2014
811-015-0036	6-4-2014	Repeal	7-1-2014	812-005-0210	4-30-2014	Amend	6-1-2014
811-035-0015	1-29-2014	Amend	3-1-2014	812-005-0250	4-30-2014	Amend	6-1-2014
812-002-0120	1-1-2014	Amend	2-1-2014	812-005-0800	7-1-2014	Amend	8-1-2014
812-002-0120	7-1-2014	Amend	8-1-2014	812-006-0200	5-5-2014	Amend(T)	6-1-2014
812-002-0640	4-30-2014	Amend	6-1-2014	812-006-0200	7-1-2014	Amend	8-1-2014
812-003-0100	4-30-2014	Amend	6-1-2014	812-006-0200(T)	7-1-2014	Repeal	8-1-2014
812-003-0120	7-1-2014	Amend	8-1-2014	812-006-0205	5-5-2014	Adopt(T)	6-1-2014

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812-006-0205(T)	7-1-2014	Repeal	8-1-2014	812-022-0028	2-6-2014	Amend	3-1-2014
812-008-0030	1-1-2014	Amend	2-1-2014	812-022-0028(T)	2-6-2014	Repeal	3-1-2014
812-008-0040	1-1-2014	Amend	2-1-2014	812-022-0029	2-6-2014	Adopt	3-1-2014
812-009-0340	7-1-2014	Amend	8-1-2014	812-022-0029(T)	2-6-2014	Repeal	3-1-2014
812-012-0110	1-1-2014	Amend	2-1-2014	812-022-0033	4-30-2014	Amend	6-1-2014
812-020-0050	7-1-2014	Amend	8-1-2014	812-022-0034	2-6-2014	Adopt	3-1-2014
812-020-0055	7-1-2014	Amend	8-1-2014	812-022-0034(T)	2-6-2014	Repeal	3-1-2014
812-020-0060	7-1-2014	Amend	8-1-2014	812-022-0035	2-6-2014	Adopt	3-1-2014
812-020-0062	7-1-2014	Amend	8-1-2014	812-022-0035(T)	2-6-2014	Repeal	3-1-2014
812-020-0065	7-1-2014	Amend	8-1-2014	812-022-0036	4-30-2014	Amend	6-1-2014
812-020-0070	7-1-2014	Amend	8-1-2014	812-022-0037	4-30-2014	Amend	6-1-2014
812-020-0071	4-30-2014	Amend	6-1-2014	812-022-0040	4-30-2014	Amend	6-1-2014
812-020-0071	7-1-2014	Amend	8-1-2014	812-022-0042	4-30-2014	Amend	6-1-2014
812-020-0072	7-1-2014	Amend	8-1-2014	812-022-0045	4-30-2014	Amend	6-1-2014
812-020-0080	7-1-2014	Amend	8-1-2014	812-022-0047	4-30-2014	Amend	6-1-2014
812-020-0085	7-1-2014	Amend	8-1-2014	812-025-0000	1-1-2014	Amend	2-1-2014
812-020-0087	7-1-2014	Amend	8-1-2014	812-025-0005	1-1-2014	Amend	2-1-2014
812-020-0090	7-1-2014	Amend	8-1-2014	812-025-0010	1-1-2014	Amend	2-1-2014
812-021-0005	1-1-2014	Amend	2-1-2014	812-030-0000	1-1-2014	Amend	2-1-2014
812-021-0021	1-1-2014	Amend	2-1-2014	812-030-0240	1-1-2014	Amend	2-1-2014
812-021-0045	1-1-2014	Amend	2-1-2014	812-032-0000	1-1-2014	Adopt	2-1-2014
812-021-0047	1-1-2014	Amend	2-1-2014	812-032-0000	4-30-2014	Amend	6-1-2014
812-022-0000	4-30-2014	Amend	6-1-2014	812-032-0100	1-1-2014	Adopt	2-1-2014
812-022-0005	4-30-2014	Amend	6-1-2014	812-032-0100	4-30-2014	Amend	6-1-2014
812-022-0010	2-6-2014	Amend	3-1-2014	812-032-0110	1-1-2014	Adopt	2-1-2014
812-022-0010	3-26-2014	Amend(T)	5-1-2014	812-032-0110	4-30-2014	Amend	6-1-2014
812-022-0010	7-1-2014	Amend	8-1-2014	812-032-0120	1-1-2014	Adopt	2-1-2014
812-022-0010(T)	2-6-2014	Repeal	3-1-2014	812-032-0120	4-30-2014	Amend	6-1-2014
812-022-0010(T)	7-1-2014	Repeal	8-1-2014	812-032-0123	1-1-2014	Adopt	2-1-2014
812-022-0010(T)	7-1-2014	Repeal	8-1-2014	812-032-0123	4-30-2014	Amend	6-1-2014
812-022-0011	4-30-2014	Amend	6-1-2014	812-032-0130	1-1-2014	Adopt	2-1-2014
812-022-0015	11-26-2013	Amend(T)	1-1-2014	812-032-0130	4-30-2014	Amend	6-1-2014
812-022-0015	2-6-2014	Amend	3-1-2014	812-032-0135	1-1-2014	Adopt	2-1-2014
812-022-0015	7-1-2014	Amend	8-1-2014	812-032-0135	4-30-2014	Amend	6-1-2014
812-022-0015(T)	2-6-2014	Repeal	3-1-2014	812-032-0140	1-1-2014	Adopt	2-1-2014
812-022-0016	4-30-2014	Amend	6-1-2014	812-032-0140	4-30-2014	Amend	6-1-2014
812-022-0018	4-30-2014	Amend	6-1-2014	812-032-0150	1-1-2014	Adopt	2-1-2014
812-022-0021	11-26-2013	Amend(T)	1-1-2014	812-032-0150	4-30-2014	Amend	6-1-2014
812-022-0021	2-6-2014	Amend	3-1-2014	813-001-0007	12-18-2013	Amend	2-1-2014
812-022-0021	3-26-2014	Amend(T)	5-1-2014	813-001-0007	12-18-2013	Amend	2-1-2014
812-022-0021	7-1-2014	Amend	8-1-2014	813-001-0007	4-17-2014	Amend(T)	6-1-2014
812-022-0021(T)	2-6-2014	Repeal	3-1-2014	813-001-0007(T)	12-18-2013	Amend	2-1-2014
812-022-0021(T)	7-1-2014	Repeal	8-1-2014	813-001-0007(T)	12-18-2013	Repeal	2-1-2014
812-022-0022	3-26-2014	Adopt(T)	5-1-2014	813-005-0001	12-18-2013	Amend	2-1-2014
812-022-0022	7-1-2014	Adopt	8-1-2014	813-005-0001(T)	12-18-2013	Repeal	2-1-2014
812-022-0022(T)	7-1-2014	Repeal	8-1-2014	813-005-0005	12-18-2013	Amend	2-1-2014
812-022-0022(T)	7-1-2014	Repeal	8-1-2014	813-005-0005	4-17-2014	Amend(T)	6-1-2014
812-022-0025	12-12-2013	Amend(T)	1-1-2014	813-005-0005(T)	12-18-2013	Repeal	2-1-2014
812-022-0025	2-6-2014	Amend	3-1-2014	813-005-0016	12-18-2013	Amend	2-1-2014
812-022-0025(T)	2-6-2014	Repeal	3-1-2014	813-005-0016(T)	12-18-2013	Repeal	2-1-2014
812-022-0026	12-12-2013	Amend(T)	1-1-2014	813-005-0020	12-18-2013	Adopt	2-1-2014
812-022-0026	2-6-2014	Amend	3-1-2014	813-005-0020	4-17-2014	Amend(T)	6-1-2014
812-022-0026(T)	2-6-2014	Repeal	3-1-2014	813-005-0020(T)	12-18-2013	Repeal	2-1-2014
812-022-0027	12-12-2013	Amend(T)	1-1-2014	813-005-0030	12-18-2013	Adopt	2-1-2014
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813-005-0040(T)	12-18-2013	Repeal	2-1-2014	813-049-0035(T)	2-10-2014	Suspend	3-1-2014
813-005-0050	12-18-2013	Adopt	2-1-2014	813-049-0040	1-27-2014	Adopt(T)	3-1-2014
813-005-0050(T)	12-18-2013	Repeal	2-1-2014	813-049-0040(T)	2-10-2014	Suspend	3-1-2014
813-005-0060	12-18-2013	Adopt	2-1-2014	813-049-0050	1-27-2014	Adopt(T)	3-1-2014
813-005-0060(T)	12-18-2013	Repeal	2-1-2014	813-049-0050(T)	2-10-2014	Suspend	3-1-2014
813-005-0070	12-18-2013	Adopt	2-1-2014	813-049-0060	1-27-2014	Adopt(T)	3-1-2014
813-005-0070(T)	12-18-2013	Repeal	2-1-2014	813-049-0060(T)	2-10-2014	Suspend	3-1-2014
813-006-0005	12-18-2013	Amend	2-1-2014	813-051-0000	1-27-2014	Amend(T)	3-1-2014
813-006-0005(T)	12-18-2013	Repeal	2-1-2014	813-051-0000(T)	2-10-2014	Suspend	3-1-2014
813-006-0010	12-18-2013	Amend	2-1-2014	813-051-0010	1-27-2014	Amend(T)	3-1-2014
813-006-0010(T)	12-18-2013	Repeal	2-1-2014	813-051-0010(T)	2-10-2014	Suspend	3-1-2014
813-006-0015	12-18-2013	Amend	2-1-2014	813-051-0020	1-27-2014	Amend(T)	3-1-2014
813-006-0015(T)	12-18-2013	Repeal	2-1-2014	813-051-0020(T)	2-10-2014	Suspend	3-1-2014
813-006-0020	12-18-2013	Amend	2-1-2014	813-051-0030	1-27-2014	Amend(T)	3-1-2014
813-006-0020(T)	12-18-2013	Repeal	2-1-2014	813-051-0030(T)	2-10-2014	Suspend	3-1-2014
813-006-0025	12-18-2013	Amend	2-1-2014	813-051-0040	1-27-2014	Amend(T)	3-1-2014
813-006-0025(T)	12-18-2013	Repeal	2-1-2014	813-051-0040(T)	2-10-2014	Suspend	3-1-2014
813-006-0030	12-18-2013	Amend	2-1-2014	813-051-0050	1-27-2014	Amend(T)	3-1-2014
813-006-0030(T)	12-18-2013	Repeal	2-1-2014	813-051-0050(T)	2-10-2014	Suspend	3-1-2014
813-006-0035	12-18-2013	Repeal	2-1-2014	813-051-0060	1-27-2014	Amend(T)	3-1-2014
813-006-0040	12-18-2013	Adopt	2-1-2014	813-051-0060(T)	2-10-2014	Suspend	3-1-2014
813-006-0040(T)	12-18-2013	Repeal	2-1-2014	813-051-0070	1-27-2014	Amend(T)	3-1-2014
813-046-0000	1-27-2014	Amend(T)	3-1-2014	813-051-0070(T)	2-10-2014	Suspend	3-1-2014
813-046-0000(T)	2-10-2014	Suspend	3-1-2014	813-051-0080	1-27-2014	Amend(T)	3-1-2014
813-046-0011	1-27-2014	Amend(T)	3-1-2014	813-051-0080(T)	2-10-2014	Suspend	3-1-2014
813-046-0011(T)	2-10-2014	Suspend	3-1-2014	813-051-0090	1-27-2014	Amend(T)	3-1-2014
813-046-0021	1-27-2014	Amend(T)	3-1-2014	813-051-0090(T)	2-10-2014	Suspend	3-1-2014
813-046-0021(T)	2-10-2014	Suspend	3-1-2014	813-051-0100	1-27-2014	Suspend	3-1-2014
813-046-0030	1-27-2014	Renumber	3-1-2014	813-051-0100(T)	2-10-2014	Suspend	3-1-2014
813-046-0040	1-27-2014	Amend(T)	3-1-2014	813-055-0001	12-18-2013	Amend	2-1-2014
813-046-0040(T)	2-10-2014	Suspend	3-1-2014	813-055-0001	6-5-2014	Amend(T)	7-1-2014
813-046-0045	1-27-2014	Amend(T)	3-1-2014	813-055-0001(T)	12-18-2013	Repeal	2-1-2014
813-046-0045(T)	2-10-2014	Suspend	3-1-2014	813-055-0010	12-18-2013	Amend	2-1-2014
813-046-0050	1-27-2014	Amend(T)	3-1-2014	813-055-0010(T)	12-18-2013	Repeal	2-1-2014
813-046-0050(T)	2-10-2014	Suspend	3-1-2014	813-055-0020	12-18-2013	Amend	2-1-2014
813-046-0061	1-27-2014	Amend(T)	3-1-2014	813-055-0020(T)	12-18-2013	Repeal	2-1-2014
813-046-0061(T)	2-10-2014	Suspend	3-1-2014	813-055-0040	12-18-2013	Amend	2-1-2014
813-046-0065	1-27-2014	Amend(T)	3-1-2014	813-055-0040(T)	12-18-2013	Repeal	2-1-2014
813-046-0065(T)	2-10-2014	Suspend	3-1-2014	813-055-0050	12-18-2013	Amend	2-1-2014
813-046-0070	1-27-2014	Amend(T)	3-1-2014	813-055-0050(T)	12-18-2013	Repeal	2-1-2014
813-046-0070(T)	2-10-2014	Suspend	3-1-2014	813-055-0060	12-18-2013	Repeal	2-1-2014
813-046-0081	1-27-2014	Amend(T)	3-1-2014	813-055-0065	12-18-2013	Adopt	2-1-2014
813-046-0081(T)	2-10-2014	Suspend	3-1-2014	813-055-0065(T)	12-18-2013	Repeal	2-1-2014
813-046-0100	1-27-2014	Suspend	3-1-2014	813-055-0075	12-18-2013	Amend	2-1-2014
813-046-0100(T)	2-10-2014	Suspend	3-1-2014	813-055-0075(T)	12-18-2013	Repeal	2-1-2014
813-049-0001	1-27-2014	Amend(T)	3-1-2014	813-055-0085	12-18-2013	Amend	2-1-2014
813-049-0001(T)	2-10-2014	Suspend	3-1-2014	813-055-0085(T)	12-18-2013	Repeal	2-1-2014
813-049-0005	1-27-2014	Amend(T)	3-1-2014	813-055-0095	12-18-2013	Adopt	2-1-2014
813-049-0005(T)	2-10-2014	Suspend	3-1-2014	813-055-0095(T)	12-18-2013	Repeal	2-1-2014
813-049-0007	1-27-2014	Adopt(T)	3-1-2014	813-055-0100	12-18-2013	Repeal	2-1-2014
813-049-0007(T)	2-10-2014	Suspend	3-1-2014	813-055-0105	12-18-2013	Amend	2-1-2014
813-049-0010	1-27-2014	Amend(T)	3-1-2014	813-055-0105(T)	12-18-2013	Repeal	2-1-2014
813-049-0010(T)	2-10-2014	Suspend	3-1-2014	813-055-0110	12-18-2013	Repeal	2-1-2014
813-049-0020	1-27-2014	Amend(T)	3-1-2014	813-055-0115	12-18-2013	Amend	2-1-2014
813-049-0020(T)	2-10-2014	Suspend	3-1-2014	813-055-0115(T)	12-18-2013	Repeal	2-1-2014

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813-090-0010	6-5-2014	Amend(T)	7-1-2014	813-130-0020	12-18-2013	Amend	2-1-2014
813-090-0015	6-5-2014	Amend(T)	7-1-2014	813-130-0020(T)	12-18-2013	Repeal	2-1-2014
813-090-0027	6-5-2014	Suspend	7-1-2014	813-130-0030	12-18-2013	Amend	2-1-2014
813-090-0031	6-5-2014	Amend(T)	7-1-2014	813-130-0030(T)	12-18-2013	Repeal	2-1-2014
813-090-0036	6-5-2014	Amend(T)	7-1-2014	813-130-0040	12-18-2013	Amend	2-1-2014
813-090-0037	6-5-2014	Amend(T)	7-1-2014	813-130-0040(T)	12-18-2013	Repeal	2-1-2014
813-090-0039	6-5-2014	Amend(T)	7-1-2014	813-130-0050	12-18-2013	Amend	2-1-2014
813-090-0080	6-5-2014	Amend(T)	7-1-2014	813-130-0050(T)	12-18-2013	Repeal	2-1-2014
813-090-0089	6-2-2014	Adopt(T)	7-1-2014	813-130-0060	12-18-2013	Amend	2-1-2014
813-090-0089(T)	6-5-2014	Suspend	7-1-2014	813-130-0060(T)	12-18-2013	Repeal	2-1-2014
813-090-0095	6-2-2014	Amend(T)	7-1-2014	813-130-0070	12-18-2013	Amend	2-1-2014
813-090-0095(T)	6-5-2014	Suspend	7-1-2014	813-130-0070(T)	12-18-2013	Repeal	2-1-2014
813-090-0110	6-5-2014	Adopt(T)	7-1-2014	813-130-0080	12-18-2013	Amend	2-1-2014
813-110-0005	12-18-2013	Amend	2-1-2014	813-130-0080(T)	12-18-2013	Repeal	2-1-2014
813-110-0005	6-5-2014	Amend(T)	7-1-2014	813-130-0090	12-18-2013	Amend	2-1-2014
813-110-0005(T)	12-18-2013	Repeal	2-1-2014	813-130-0090(T)	12-18-2013	Repeal	2-1-2014
813-110-0010	12-18-2013	Amend	2-1-2014	813-130-0100	12-18-2013	Amend	2-1-2014
813-110-0010(T)	12-18-2013	Repeal	2-1-2014	813-130-0100(T)	12-18-2013	Repeal	2-1-2014
813-110-0012	12-18-2013	Repeal	2-1-2014	813-130-0110	12-18-2013	Amend	2-1-2014
813-110-0013	12-18-2013	Amend	2-1-2014	813-130-0110(T)	12-18-2013	Repeal	2-1-2014
813-110-0013(T)	12-18-2013	Repeal	2-1-2014	813-130-0120	12-18-2013	Amend	2-1-2014
813-110-0015	12-18-2013	Amend	2-1-2014	813-130-0120(T)	12-18-2013	Repeal	2-1-2014
813-110-0015(T)	12-18-2013	Repeal	2-1-2014	813-130-0130	12-18-2013	Repeal	2-1-2014
813-110-0020	12-18-2013	Amend	2-1-2014	813-130-0140	12-18-2013	Repeal	2-1-2014
813-110-0020(T)	12-18-2013	Repeal	2-1-2014	813-130-0150	12-18-2013	Amend	2-1-2014
813-110-0021	12-18-2013	Amend	2-1-2014	813-130-0150(T)	12-18-2013	Repeal	2-1-2014
813-110-0021(T)	12-18-2013	Repeal	2-1-2014	813-145-0000	1-27-2014	Amend(T)	3-1-2014
813-110-0022	12-18-2013	Amend	2-1-2014	813-145-0000(T)	2-10-2014	Suspend	3-1-2014
813-110-0022(T)	12-18-2013	Repeal	2-1-2014	813-145-0010	1-27-2014	Amend(T)	3-1-2014
813-110-0023	12-18-2013	Repeal	2-1-2014	813-145-0010(T)	2-10-2014	Suspend	3-1-2014
813-110-0025	12-18-2013	Amend	2-1-2014	813-145-0020	1-27-2014	Amend(T)	3-1-2014
813-110-0025(T)	12-18-2013	Repeal	2-1-2014	813-145-0020(T)	2-10-2014	Suspend	3-1-2014
813-110-0026	12-18-2013	Adopt	2-1-2014	813-145-0025	1-27-2014	Adopt(T)	3-1-2014
813-110-0026(T)	12-18-2013	Repeal	2-1-2014	813-145-0025(T)	2-10-2014	Suspend	3-1-2014
813-110-0027	12-18-2013	Adopt	2-1-2014	813-145-0030	1-27-2014	Amend(T)	3-1-2014
813-110-0027(T)	12-18-2013	Repeal	2-1-2014	813-145-0030(T)	2-10-2014	Suspend	3-1-2014
813-110-0030	12-18-2013	Amend	2-1-2014	813-145-0040	1-27-2014	Amend(T)	3-1-2014
813-110-0030(T)	12-18-2013	Repeal	2-1-2014	813-145-0040(T)	2-10-2014	Suspend	3-1-2014
813-110-0032	12-18-2013	Adopt	2-1-2014	813-145-0050	1-27-2014	Amend(T)	3-1-2014
813-110-0032(T)	12-18-2013	Repeal	2-1-2014	813-145-0050(T)	2-10-2014	Suspend	3-1-2014
813-110-0033	12-18-2013	Repeal	2-1-2014	813-145-0060	1-27-2014	Amend(T)	3-1-2014
813-110-0034	12-18-2013	Adopt	2-1-2014	813-145-0060(T)	2-10-2014	Suspend	3-1-2014
813-110-0034(T)	12-18-2013	Repeal	2-1-2014	813-145-0070	1-27-2014	Amend(T)	3-1-2014
813-110-0035	12-18-2013	Amend	2-1-2014	813-145-0070(T)	2-10-2014	Suspend	3-1-2014
813-110-0035(T)	12-18-2013	Repeal	2-1-2014	813-145-0080	1-27-2014	Amend(T)	3-1-2014
813-110-0037	12-18-2013	Adopt	2-1-2014	813-145-0080(T)	2-10-2014	Suspend	3-1-2014
813-110-0037(T)	12-18-2013	Repeal	2-1-2014	813-145-0090	1-27-2014	Suspend	3-1-2014
813-110-0040	12-18-2013	Amend	2-1-2014	813-145-0090(T)	2-10-2014	Suspend	3-1-2014
813-110-0040(T)	12-18-2013	Repeal	2-1-2014	813-200-0001	1-27-2014	Amend(T)	3-1-2014
813-110-0045	12-18-2013	Adopt	2-1-2014	813-200-0001(T)	2-10-2014	Suspend	3-1-2014
813-110-0045(T)	12-18-2013	Repeal	2-1-2014	813-200-0005	1-27-2014	Amend(T)	3-1-2014
813-110-0050	12-18-2013	Repeal	2-1-2014	813-200-0005(T)	2-10-2014	Suspend	3-1-2014
813-130-0000	12-18-2013	Amend	2-1-2014	813-200-0007	1-27-2014	Adopt(T)	3-1-2014
813-130-0000(T)	12-18-2013	Repeal	2-1-2014	813-200-0007(T)	2-10-2014	Suspend	3-1-2014
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813-200-0010(T)	2-10-2014	Suspend	3-1-2014	813-205-0051	12-18-2013	Amend	2-1-2014
813-200-0017	1-27-2014	Adopt(T)	3-1-2014	813-205-0051(T)	12-18-2013	Repeal	2-1-2014
813-200-0017(T)	2-10-2014	Suspend	3-1-2014	813-205-0052	12-18-2013	Amend	2-1-2014
813-200-0019	1-27-2014	Adopt(T)	3-1-2014	813-205-0052(T)	12-18-2013	Repeal	2-1-2014
813-200-0019(T)	2-10-2014	Suspend	3-1-2014	813-205-0060	12-18-2013	Amend	2-1-2014
813-200-0020	1-27-2014	Amend(T)	3-1-2014	813-205-0060(T)	12-18-2013	Repeal	2-1-2014
813-200-0020(T)	2-10-2014	Suspend	3-1-2014	813-205-0070	12-18-2013	Amend	2-1-2014
813-200-0030	1-27-2014	Amend(T)	3-1-2014	813-205-0070(T)	12-18-2013	Repeal	2-1-2014
813-200-0030(T)	2-10-2014	Suspend	3-1-2014	813-205-0080	12-18-2013	Amend	2-1-2014
813-200-0040	1-27-2014	Amend(T)	3-1-2014	813-205-0080(T)	12-18-2013	Repeal	2-1-2014
813-200-0040(T)	2-10-2014	Suspend	3-1-2014	813-205-0082	12-18-2013	Adopt	2-1-2014
813-200-0050	1-27-2014	Amend(T)	3-1-2014	813-205-0082(T)	12-18-2013	Repeal	2-1-2014
813-200-0050(T)	2-10-2014	Suspend	3-1-2014	813-205-0085	12-18-2013	Amend	2-1-2014
813-200-0055	1-27-2014	Adopt(T)	3-1-2014	813-205-0085(T)	12-18-2013	Repeal	2-1-2014
813-200-0055(T)	2-10-2014	Suspend	3-1-2014	813-205-0100	12-18-2013	Amend	2-1-2014
813-200-0060	1-27-2014	Suspend	3-1-2014	813-205-0100(T)	12-18-2013	Repeal	2-1-2014
813-200-0060(T)	2-10-2014	Suspend	3-1-2014	813-205-0110	12-18-2013	Amend	2-1-2014
813-200-0070	1-27-2014	Adopt(T)	3-1-2014	813-205-0110(T)	12-18-2013	Repeal	2-1-2014
813-200-0070(T)	2-10-2014	Suspend	3-1-2014	813-205-0120	12-18-2013	Amend	2-1-2014
813-202-0001	1-27-2014	Adopt(T)	3-1-2014	813-205-0120(T)	12-18-2013	Repeal	2-1-2014
813-202-0001(T)	2-10-2014	Suspend	3-1-2014	813-205-0130	12-18-2013	Amend	2-1-2014
813-202-0005	1-27-2014	Amend(T)	3-1-2014	813-205-0130(T)	12-18-2013	Repeal	2-1-2014
813-202-0005(T)	2-10-2014	Suspend	3-1-2014	813-205-0140	12-18-2013	Repeal	2-1-2014
813-202-0008	1-27-2014	Adopt(T)	3-1-2014	813-205-0145	12-18-2013	Adopt	2-1-2014
813-202-0008(T)	2-10-2014	Suspend	3-1-2014	813-205-0145(T)	12-18-2013	Repeal	2-1-2014
813-202-0010	1-27-2014	Amend(T)	3-1-2014	813-205-0150	12-18-2013	Adopt	2-1-2014
813-202-0010(T)	2-10-2014	Suspend	3-1-2014	813-205-0150(T)	12-18-2013	Repeal	2-1-2014
813-202-0015	1-27-2014	Suspend	3-1-2014	813-210-0001	1-27-2014	Amend(T)	3-1-2014
813-202-0015(T)	2-10-2014	Suspend	3-1-2014	813-210-0001(T)	2-10-2014	Suspend	3-1-2014
813-202-0017	1-27-2014	Adopt(T)	3-1-2014	813-210-0009	1-27-2014	Amend(T)	3-1-2014
813-202-0017(T)	2-10-2014	Suspend	3-1-2014	813-210-0009(T)	2-10-2014	Suspend	3-1-2014
813-202-0019	1-27-2014	Adopt(T)	3-1-2014	813-210-0010	1-27-2014	Repeal	3-1-2014
813-202-0019(T)	2-10-2014	Suspend	3-1-2014	813-210-0015	1-27-2014	Amend(T)	3-1-2014
813-202-0020	1-27-2014	Amend(T)	3-1-2014	813-210-0015(T)	2-10-2014	Suspend	3-1-2014
813-202-0020(T)	2-10-2014	Suspend	3-1-2014	813-210-0022	1-27-2014	Adopt(T)	3-1-2014
813-202-0030	1-27-2014	Amend(T)	3-1-2014	813-210-0022(T)	2-10-2014	Suspend	3-1-2014
813-202-0030(T)	2-10-2014	Suspend	3-1-2014	813-210-0025	1-27-2014	Amend(T)	3-1-2014
813-202-0040	1-27-2014	Amend(T)	3-1-2014	813-210-0025(T)	2-10-2014	Suspend	3-1-2014
813-202-0040(T)	2-10-2014	Suspend	3-1-2014	813-210-0030	1-27-2014	Repeal	3-1-2014
813-202-0050	1-27-2014	Amend(T)	3-1-2014	813-210-0040	1-27-2014	Suspend	3-1-2014
813-202-0050(T)	2-10-2014	Suspend	3-1-2014	813-210-0040(T)	2-10-2014	Suspend	3-1-2014
813-202-0060	1-27-2014	Amend(T)	3-1-2014	813-210-0050	1-27-2014	Amend(T)	3-1-2014
813-202-0060(T)	2-10-2014	Suspend	3-1-2014	813-210-0050(T)	2-10-2014	Suspend	3-1-2014
813-202-0070	1-27-2014	Adopt(T)	3-1-2014	813-210-0052	1-27-2014	Amend(T)	3-1-2014
813-202-0070(T)	2-10-2014	Suspend	3-1-2014	813-210-0052(T)	2-10-2014	Suspend	3-1-2014
813-205-0000	12-18-2013	Amend	2-1-2014	813-210-0055	1-27-2014	Suspend	3-1-2014
813-205-0000(T)	12-18-2013	Repeal	2-1-2014	813-210-0055(T)	2-10-2014	Suspend	3-1-2014
813-205-0010	12-18-2013	Repeal	2-1-2014	813-210-0056	1-27-2014	Adopt(T)	3-1-2014
813-205-0020	12-18-2013	Amend	2-1-2014	813-210-0056(T)	2-10-2014	Suspend	3-1-2014
813-205-0020(T)	12-18-2013	Repeal	2-1-2014	813-210-0060	1-27-2014	Amend(T)	3-1-2014
813-205-0030	12-18-2013	Amend	2-1-2014	813-210-0060(T)	2-10-2014	Suspend	3-1-2014
813-205-0030(T)	12-18-2013	Repeal	2-1-2014	813-210-0065	1-27-2014	Suspend	3-1-2014
813-205-0040	12-18-2013	Amend	2-1-2014	813-210-0065(T)	2-10-2014	Suspend	3-1-2014
813-205-0040(T)	12-18-2013	Repeal	2-1-2014	813-210-0075	1-27-2014	Adopt(T)	3-1-2014
813-205-0050	12-18-2013	Amend	2-1-2014	813-210-0075(T)	2-10-2014	Suspend	3-1-2014
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813-220-0001	1-27-2014	Amend(T)	3-1-2014	813-250-0055(T)	2-10-2014	Suspend	3-1-2014
813-220-0001(T)	2-10-2014	Suspend	3-1-2014	813-250-0060	1-27-2014	Adopt(T)	3-1-2014
813-220-0005	1-27-2014	Amend(T)	3-1-2014	813-250-0060(T)	2-10-2014	Suspend	3-1-2014
813-220-0005(T)	2-10-2014	Suspend	3-1-2014	813-250-0070	1-27-2014	Adopt(T)	3-1-2014
813-220-0010	1-27-2014	Amend(T)	3-1-2014	813-250-0070(T)	2-10-2014	Suspend	3-1-2014
813-220-0010(T)	2-10-2014	Suspend	3-1-2014	813-300-0010	12-18-2013	Amend(T)	2-1-2014
813-220-0015	1-27-2014	Amend(T)	3-1-2014	813-300-0010	6-12-2014	Amend	7-1-2014
813-220-0015(T)	2-10-2014	Suspend	3-1-2014	813-360-0000	6-24-2014	Adopt	8-1-2014
813-220-0020	1-27-2014	Amend(T)	3-1-2014	813-360-0010	6-24-2014	Adopt	8-1-2014
813-220-0020(T)	2-10-2014	Suspend	3-1-2014	813-360-0020	6-24-2014	Adopt	8-1-2014
813-220-0030	1-27-2014	Amend(T)	3-1-2014	813-360-0030	6-24-2014	Adopt	8-1-2014
813-220-0030(T)	2-10-2014	Suspend	3-1-2014	813-360-0040	6-24-2014	Adopt	8-1-2014
813-220-0050	1-27-2014	Amend(T)	3-1-2014	813-360-0050	6-24-2014	Adopt	8-1-2014
813-220-0050(T)	2-10-2014	Suspend	3-1-2014	813-360-0060	6-24-2014	Adopt	8-1-2014
813-220-0060	1-27-2014	Amend(T)	3-1-2014	817-005-0005	3-1-2014	Amend	4-1-2014
813-220-0060(T)	2-10-2014	Suspend	3-1-2014	817-010-0007	3-1-2014	Amend	4-1-2014
813-220-0070	1-27-2014	Suspend	3-1-2014	817-010-0009	3-1-2014	Repeal	4-1-2014
813-220-0070(T)	2-10-2014	Suspend	3-1-2014	817-010-0014	1-1-2014	Amend	2-1-2014
813-220-0080	1-27-2014	Adopt(T)	3-1-2014	817-010-0021	3-1-2014	Amend	4-1-2014
813-220-0080(T)	2-10-2014	Suspend	3-1-2014	817-010-0035	3-1-2014	Amend	4-1-2014
813-240-0001	1-27-2014	Amend(T)	3-1-2014	817-010-0040	3-1-2014	Amend	4-1-2014
813-240-0001(T)	2-10-2014	Suspend	3-1-2014	817-010-0055	3-1-2014	Amend	4-1-2014
813-240-0005	1-27-2014	Amend(T)	3-1-2014	817-010-0060	3-1-2014	Amend	4-1-2014
813-240-0005(T)	2-10-2014	Suspend	3-1-2014	817-010-0065	3-1-2014	Amend	4-1-2014
813-240-0010	1-27-2014	Amend(T)	3-1-2014	817-010-0068	3-1-2014	Amend	4-1-2014
813-240-0010(T)	2-10-2014	Suspend	3-1-2014	817-010-0069	3-1-2014	Amend	4-1-2014
813-240-0015	1-27-2014	Amend(T)	3-1-2014	817-010-0075	3-1-2014	Amend	4-1-2014
813-240-0015(T)	2-10-2014	Suspend	3-1-2014	817-010-0085	3-1-2014	Amend	4-1-2014
813-240-0020	1-27-2014	Amend(T)	3-1-2014	817-010-0095	3-1-2014	Amend	4-1-2014
813-240-0020(T)	2-10-2014	Suspend	3-1-2014	817-010-0101	3-1-2014	Amend	4-1-2014
813-240-0030	1-27-2014	Renumber	3-1-2014	817-010-0106	3-1-2014	Amend	4-1-2014
813-240-0041	1-27-2014	Amend(T)	3-1-2014	817-010-0110	3-1-2014	Amend	4-1-2014
813-240-0041(T)	2-10-2014	Suspend	3-1-2014	817-010-0300	3-1-2014	Repeal	4-1-2014
813-240-0050	1-27-2014	Amend(T)	3-1-2014	817-015-0010	3-1-2014	Repeal	4-1-2014
813-240-0050(T)	2-10-2014	Suspend	3-1-2014	817-015-0030	3-1-2014	Amend	4-1-2014
813-240-0060	1-27-2014	Amend(T)	3-1-2014	817-015-0065	3-1-2014	Amend	4-1-2014
813-240-0060(T)	2-10-2014	Suspend	3-1-2014	817-020-0001	3-1-2014	Amend	4-1-2014
813-240-0070	1-27-2014	Amend(T)	3-1-2014	817-020-0006	3-1-2014	Amend	4-1-2014
813-240-0070(T)	2-10-2014	Suspend	3-1-2014	817-020-0007	3-1-2014	Amend	4-1-2014
813-240-0080	1-27-2014	Amend(T)	3-1-2014	817-020-0009	3-1-2014	Amend	4-1-2014
813-240-0080(T)	2-10-2014	Suspend	3-1-2014	817-020-0305	3-1-2014	Amend	4-1-2014
813-240-0090	1-27-2014	Suspend	3-1-2014	817-020-0325	3-1-2014	Adopt	4-1-2014
813-240-0090(T)	2-10-2014	Suspend	3-1-2014	817-020-0350	3-1-2014	Adopt	4-1-2014
813-250-0000	1-27-2014	Amend(T)	3-1-2014	817-030-0003	3-1-2014	Amend	4-1-2014
813-250-0000(T)	2-10-2014	Suspend	3-1-2014	817-030-0005	3-1-2014	Amend	4-1-2014
813-250-0005	1-27-2014	Adopt(T)	3-1-2014	817-030-0028	1-1-2014	Adopt	2-1-2014
813-250-0005(T)	2-10-2014	Suspend	3-1-2014	817-030-0030	3-1-2014	Amend	4-1-2014
813-250-0015	1-27-2014	Adopt(T)	3-1-2014	817-030-0065	1-1-2014	Amend	2-1-2014
813-250-0015(T)	2-10-2014	Suspend	3-1-2014	817-030-0071	3-1-2014	Amend	4-1-2014
813-250-0020	1-27-2014	Amend(T)	3-1-2014	817-030-0080	3-1-2014	Amend	4-1-2014
813-250-0020(T)	2-10-2014	Suspend	3-1-2014	817-035-0010	3-1-2014	Amend	4-1-2014
813-250-0030	1-27-2014	Amend(T)	3-1-2014	817-035-0048	3-1-2014	Amend	4-1-2014
813-250-0030(T)	2-10-2014	Suspend	3-1-2014	817-035-0050	3-1-2014	Amend	4-1-2014
813-250-0040	1-27-2014	Amend(T)	3-1-2014	817-035-0052	3-1-2014	Amend	4-1-2014
813-250-0040(T)	2-10-2014	Suspend	3-1-2014	817-035-0068	3-1-2014	Amend	4-1-2014

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817-035-0090	3-1-2014	Amend	4-1-2014	820-010-0226	2-14-2014	Amend(T)	3-1-2014
817-035-0093	3-1-2014	Adopt	4-1-2014	820-010-0227	12-5-2013	Amend(T)	1-1-2014
817-035-0095	3-1-2014	Adopt	4-1-2014	820-010-0227	2-14-2014	Amend(T)	3-1-2014
817-035-0110	3-1-2014	Amend	4-1-2014	820-010-0227(T)	12-5-2013	Suspend	1-1-2014
817-060-0010	3-1-2014	Amend	4-1-2014	820-010-0227(T)	12-5-2013	Suspend	1-1-2014
817-060-0020	3-1-2014	Amend	4-1-2014	820-010-0228	12-5-2013	Amend(T)	1-1-2014
817-060-0030	3-1-2014	Amend	4-1-2014	820-010-0228	2-14-2014	Amend(T)	3-1-2014
817-060-0050	3-1-2014	Amend	4-1-2014	820-010-0228(T)	12-5-2013	Suspend	1-1-2014
817-080-0005	3-1-2014	Repeal	4-1-2014	820-010-0228(T)	12-5-2013	Suspend	1-1-2014
817-090-0025	3-1-2014	Amend	4-1-2014	820-010-0260(T)	12-5-2013	Suspend	1-1-2014
817-090-0045	3-1-2014	Amend	4-1-2014	820-010-0260(T)	12-5-2013	Suspend	1-1-2014
817-090-0050	3-1-2014	Amend	4-1-2014	820-010-0305	12-5-2013	Amend(T)	1-1-2014
817-090-0055	3-1-2014	Amend	4-1-2014	820-010-0305	2-26-2014	Amend	4-1-2014
817-090-0065	3-1-2014	Amend	4-1-2014	820-010-0305(T)	12-5-2013	Suspend	1-1-2014
817-090-0070	3-1-2014	Amend	4-1-2014	820-010-0305(T)	12-5-2013	Suspend	1-1-2014
817-090-0075	3-1-2014	Amend	4-1-2014	820-010-0305(T)	2-26-2014	Repeal	4-1-2014
817-090-0085	3-1-2014	Amend	4-1-2014	820-010-0420	2-14-2014	Amend(T)	3-1-2014
817-090-0090	3-1-2014	Amend	4-1-2014	820-010-0442	12-5-2013	Amend(T)	1-1-2014
817-090-0105	3-1-2014	Amend	4-1-2014	820-010-0442	2-26-2014	Amend	4-1-2014
817-090-0110	3-1-2014	Amend	4-1-2014	820-010-0442(T)	12-5-2013	Suspend	1-1-2014
817-090-0115	3-1-2014	Amend	4-1-2014	820-010-0442(T)	12-5-2013	Suspend	1-1-2014
817-100-0005	3-1-2014	Amend	4-1-2014	820-010-0442(T)	2-26-2014	Repeal	4-1-2014
817-120-0005	3-1-2014	Amend	4-1-2014	820-010-0620	12-5-2013	Amend(T)	1-1-2014
818-001-0087	8-1-2014	Amend	8-1-2014	820-010-0620	2-26-2014	Amend	4-1-2014
818-012-0005	8-1-2014	Amend	8-1-2014	820-010-0620(T)	12-5-2013	Suspend	1-1-2014
818-012-0030	8-1-2014	Amend	8-1-2014	820-010-0620(T)	12-5-2013	Suspend	1-1-2014
818-012-0040	8-1-2014	Amend	8-1-2014	820-010-0620(T)	2-26-2014	Repeal	4-1-2014
818-021-0060	8-1-2014	Amend	8-1-2014	820-010-0621	12-5-2013	Amend(T)	1-1-2014
818-021-0070	8-1-2014	Amend	8-1-2014	820-010-0621	2-26-2014	Amend	4-1-2014
818-026-0050	8-1-2014	Amend	8-1-2014	820-010-0621(T)	12-5-2013	Suspend	1-1-2014
818-026-0055	8-1-2014	Amend	8-1-2014	820-010-0621(T)	12-5-2013	Suspend	1-1-2014
818-026-0060	8-1-2014	Amend	8-1-2014	820-010-0621(T)	2-26-2014	Repeal	4-1-2014
818-026-0065	8-1-2014	Amend	8-1-2014	833-020-0051	1-8-2014	Amend	2-1-2014
818-026-0070	8-1-2014	Amend	8-1-2014	833-020-0075	7-1-2014	Amend(T)	7-1-2014
818-035-0025	8-1-2014	Amend	8-1-2014	833-040-0021	1-8-2014	Amend	2-1-2014
818-035-0030	8-1-2014	Amend	8-1-2014	833-050-0061	6-11-2014	Amend	7-1-2014
818-035-0040	8-1-2014	Amend	8-1-2014	833-050-0131	6-11-2014	Amend	7-1-2014
818-042-0040	8-1-2014	Amend	8-1-2014	833-060-0012	1-8-2014	Amend	2-1-2014
818-042-0050	8-1-2014	Amend	8-1-2014	833-100-0021	6-11-2014	Amend	7-1-2014
818-042-0060	8-1-2014	Amend	8-1-2014	836-007-0001	12-31-2013	Adopt(T)	2-1-2014
818-042-0090	8-1-2014	Amend	8-1-2014	836-007-0001	6-20-2014	Adopt	8-1-2014
818-042-0120	8-1-2014	Amend	8-1-2014	836-010-0011	1-1-2014	Amend	2-1-2014
818-042-0130	8-1-2014	Amend	8-1-2014	836-010-0013	4-24-2014	Adopt(T)	6-1-2014
820-001-0020	12-5-2013	Amend(T)	1-1-2014	836-010-0051	1-1-2014	Adopt	2-1-2014
820-001-0020	2-26-2014	Amend	4-1-2014	836-011-0000	2-14-2014	Amend	3-1-2014
820-001-0020(T)	12-5-2013	Suspend	1-1-2014	836-011-0050	2-14-2014	Adopt	3-1-2014
820-001-0020(T)	12-5-2013	Suspend	1-1-2014	836-020-0770	1-1-2014	Amend	2-1-2014
820-001-0020(T)	2-26-2014	Repeal	4-1-2014	836-020-0775	1-1-2014	Amend	2-1-2014
820-001-0025	12-5-2013	Amend(T)	1-1-2014	836-020-0780	1-1-2014	Amend	2-1-2014
820-001-0025	2-26-2014	Amend	4-1-2014	836-020-0785	1-1-2014	Amend	2-1-2014
820-010-0010	12-5-2013	Amend(T)	1-1-2014	836-020-0806	1-1-2014	Amend	2-1-2014
820-010-0010	2-26-2014	Amend	4-1-2014	836-027-0005	1-1-2014	Amend	2-1-2014
820-010-0010(T)	12-5-2013	Suspend	1-1-2014	836-027-0005	1-8-2014	Amend	2-1-2014
820-010-0010(T)	12-5-2013	Suspend	1-1-2014	836-027-0010	1-1-2014	Amend	2-1-2014
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836-027-0030	1-8-2014	Amend	2-1-2014	836-053-0475	1-1-2014	Amend	2-1-2014
836-027-0035	1-1-2014	Amend	2-1-2014	836-053-0510	1-1-2014	Amend	2-1-2014
836-027-0035	1-8-2014	Amend	2-1-2014	836-053-0700	1-1-2014	Repeal	2-1-2014
836-027-0045	1-1-2014	Amend	2-1-2014	836-053-0710	1-1-2014	Repeal	2-1-2014
836-027-0045	1-8-2014	Amend	2-1-2014	836-053-0750	1-1-2014	Repeal	2-1-2014
836-027-0050	1-1-2014	Amend	2-1-2014	836-053-0760	1-1-2014	Repeal	2-1-2014
836-027-0050	1-8-2014	Amend	2-1-2014	836-053-0780	1-1-2014	Repeal	2-1-2014
836-027-0100	1-1-2014	Amend	2-1-2014	836-053-0785	1-1-2014	Repeal	2-1-2014
836-027-0100	1-8-2014	Amend	2-1-2014	836-053-0790	1-1-2014	Repeal	2-1-2014
836-027-0125	1-1-2014	Adopt	2-1-2014	836-053-0800	1-1-2014	Repeal	2-1-2014
836-027-0125	1-8-2014	Adopt	2-1-2014	836-053-0825	1-1-2014	Amend	2-1-2014
836-027-0140	1-1-2014	Adopt	2-1-2014	836-053-0830	1-1-2014	Amend	2-1-2014
836-027-0140	1-8-2014	Adopt	2-1-2014	836-053-0835	1-1-2014	Adopt	2-1-2014
836-052-0142	12-5-2013	Amend(T)	1-1-2014	836-053-0851	1-1-2014	Amend	2-1-2014
836-052-0142	5-19-2014	Amend	7-1-2014	836-053-0900	1-1-2014	Amend	2-1-2014
836-052-0676	1-1-2014	Amend	2-1-2014	836-053-0910	1-1-2014	Amend	2-1-2014
836-052-0800	1-1-2014	Amend	2-1-2014	836-053-1000	1-1-2014	Amend	2-1-2014
836-052-0830	1-1-2014	Repeal	2-1-2014	836-053-1020	1-1-2014	Amend	2-1-2014
836-052-0860	1-1-2014	Amend	2-1-2014	836-053-1030	1-1-2014	Amend	2-1-2014
836-053-0000	1-1-2014	Amend	2-1-2014	836-053-1035	1-1-2014	Amend	2-1-2014
836-053-0001	1-1-2014	Amend	2-1-2014	836-053-1040	1-1-2014	Repeal	2-1-2014
836-053-0002	1-1-2014	Adopt	2-1-2014	836-053-1070	1-1-2014	Amend	2-1-2014
836-053-0003	1-1-2014	Amend	2-1-2014	836-053-1080	1-1-2014	Amend	2-1-2014
836-053-0005	1-1-2014	Amend	2-1-2014	836-053-1100	1-1-2014	Amend	2-1-2014
836-053-0007	1-1-2014	Amend	2-1-2014	836-053-1110	1-1-2014	Amend	2-1-2014
836-053-0008	1-1-2014	Adopt	2-1-2014	836-053-1130	1-1-2014	Amend	2-1-2014
836-053-0009	1-1-2014	Adopt	2-1-2014	836-053-1140	1-1-2014	Amend	2-1-2014
836-053-0021	1-1-2014	Amend	2-1-2014	836-053-1170	1-1-2014	Amend	2-1-2014
836-053-0030	1-1-2014	Amend	2-1-2014	836-053-1180	1-1-2014	Adopt	2-1-2014
836-053-0040	1-1-2014	Repeal	2-1-2014	836-053-1190	1-1-2014	Amend	2-1-2014
836-053-0050	1-1-2014	Amend	2-1-2014	836-053-1200	1-1-2014	Amend	2-1-2014
836-053-0060	1-1-2014	Repeal	2-1-2014	836-053-1315	1-1-2014	Amend	2-1-2014
836-053-0063	1-1-2014	Adopt	2-1-2014	836-053-1320	1-1-2014	Amend	2-1-2014
836-053-0065	1-1-2014	Amend	2-1-2014	836-053-1325	1-1-2014	Amend	2-1-2014
836-053-0066	4-11-2014	Adopt(T)	5-1-2014	836-053-1330	1-1-2014	Amend	2-1-2014
836-053-0070	1-1-2014	Amend	2-1-2014	836-053-1335	1-1-2014	Amend	2-1-2014
836-053-0081	1-1-2014	Repeal	2-1-2014	836-053-1340	1-1-2014	Amend	2-1-2014
836-053-0210	1-1-2014	Repeal	2-1-2014	836-053-1342	1-1-2014	Amend	2-1-2014
836-053-0211	1-1-2014	Adopt	2-1-2014	836-053-1345	1-1-2014	Amend	2-1-2014
836-053-0220	1-1-2014	Repeal	2-1-2014	836-053-1350	1-1-2014	Amend	2-1-2014
836-053-0221	1-1-2014	Adopt	2-1-2014	836-053-1355	1-1-2014	Amend	2-1-2014
836-053-0250	1-1-2014	Repeal	2-1-2014	836-053-1360	1-1-2014	Amend	2-1-2014
836-053-0410	1-1-2014	Amend	2-1-2014	836-053-1365	1-1-2014	Amend	2-1-2014
836-053-0415	1-1-2014	Amend	2-1-2014	836-053-1400	1-1-2014	Amend	2-1-2014
836-053-0430	1-1-2014	Repeal	2-1-2014	836-053-1401	1-1-2014	Repeal	2-1-2014
836-053-0431	1-1-2014	Adopt	2-1-2014	836-053-1410	1-1-2014	Amend	2-1-2014
836-053-0431	2-4-2014	Amend(T)	3-1-2014	836-053-1415	1-1-2014	Amend	2-1-2014
836-053-0431	4-2-2014	Amend(T)	5-1-2014	836-071-0405	1-1-2014	Adopt	2-1-2014
836-053-0431	4-16-2014	Amend(T)	6-1-2014	836-071-0410	1-1-2014	Adopt	2-1-2014
836-053-0440	1-1-2014	Repeal	2-1-2014	836-071-0415	1-1-2014	Adopt	2-1-2014
836-053-0460	1-1-2014	Repeal	2-1-2014	836-071-0420	1-1-2014	Adopt	2-1-2014
836-053-0465	1-1-2014	Amend	2-1-2014	836-071-0425	1-1-2014	Adopt	2-1-2014
836-053-0465	4-11-2014	Amend(T)	5-1-2014	836-071-0430	1-1-2014	Adopt	2-1-2014
836-053-0471	1-1-2014	Repeal	2-1-2014	836-075-0045	1-1-2014	Adopt	2-1-2014
836-053-0472	1-1-2014	Adopt	2-1-2014	836-080-0050	1-1-2014	Amend	2-1-2014

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836-080-0080	1-1-2014	Amend	2-1-2014	837-012-0615	7-1-2014	Amend	8-1-2014
836-081-0005	1-1-2014	Amend	2-1-2014	837-012-0620	7-1-2014	Amend	8-1-2014
836-082-0050	1-1-2014	Amend	2-1-2014	837-012-0625	7-1-2014	Amend	8-1-2014
836-082-0055	1-1-2014	Amend	2-1-2014	837-012-0630	7-1-2014	Amend	8-1-2014
836-085-0001	1-1-2014	Amend	2-1-2014	837-012-0635	7-1-2014	Amend	8-1-2014
836-085-0005	1-1-2014	Amend	2-1-2014	837-012-0640	7-1-2014	Amend	8-1-2014
836-085-0010	1-1-2014	Amend	2-1-2014	837-012-0645	7-1-2014	Amend	8-1-2014
836-085-0025	1-1-2014	Amend	2-1-2014	837-012-0650	7-1-2014	Amend	8-1-2014
836-085-0035	1-1-2014	Amend	2-1-2014	837-012-0655	7-1-2014	Amend	8-1-2014
836-085-0045	1-1-2014	Amend	2-1-2014	837-012-0660	7-1-2014	Amend	8-1-2014
836-085-0050	1-1-2014	Amend	2-1-2014	837-012-0665	7-1-2014	Amend	8-1-2014
836-100-0011	1-1-2014	Repeal	2-1-2014	837-012-0670	7-1-2014	Amend	8-1-2014
836-100-0016	1-1-2014	Repeal	2-1-2014	837-012-0675	7-1-2014	Amend	8-1-2014
836-100-0020	1-1-2014	Repeal	2-1-2014	837-012-0700	7-1-2014	Amend	8-1-2014
836-100-0025	1-1-2014	Repeal	2-1-2014	837-012-0710	7-1-2014	Amend	8-1-2014
836-100-0030	1-1-2014	Repeal	2-1-2014	837-012-0720	7-1-2014	Amend	8-1-2014
836-100-0035	1-1-2014	Repeal	2-1-2014	837-012-0730	7-1-2014	Amend	8-1-2014
836-100-0040	1-1-2014	Repeal	2-1-2014	837-012-0740	7-1-2014	Amend	8-1-2014
836-100-0045	1-1-2014	Repeal	2-1-2014	837-012-0750	7-1-2014	Amend	8-1-2014
836-100-0100	1-1-2014	Amend	2-1-2014	837-012-0760	7-1-2014	Amend	8-1-2014
836-100-0105	1-1-2014	Amend	2-1-2014	837-012-0770	7-1-2014	Amend	8-1-2014
836-100-0110	1-1-2014	Amend	2-1-2014	837-012-0780	7-1-2014	Amend	8-1-2014
836-100-0115	1-1-2014	Amend	2-1-2014	837-012-0790	7-1-2014	Amend	8-1-2014
836-200-0400	1-2-2014	Adopt(T)	2-1-2014	837-012-0800	7-1-2014	Amend	8-1-2014
836-200-0405	1-2-2014	Adopt(T)	2-1-2014	837-012-0810	7-1-2014	Amend	8-1-2014
836-200-0410	1-2-2014	Adopt(T)	2-1-2014	837-012-0820	7-1-2014	Amend	8-1-2014
836-200-0415	1-2-2014	Adopt(T)	2-1-2014	837-012-0830	7-1-2014	Amend	8-1-2014
836-200-0420	1-2-2014	Adopt(T)	2-1-2014	837-012-0835	7-1-2014	Amend	8-1-2014
837-012-0305	7-1-2014	Amend	8-1-2014	837-012-0840	7-1-2014	Amend	8-1-2014
837-012-0310	7-1-2014	Amend	8-1-2014	837-012-0850	7-1-2014	Amend	8-1-2014
837-012-0315	7-1-2014	Amend	8-1-2014	837-012-0855	7-1-2014	Amend	8-1-2014
837-012-0320	7-1-2014	Amend	8-1-2014	837-012-0860	7-1-2014	Amend	8-1-2014
837-012-0325	7-1-2014	Amend	8-1-2014	837-012-0865	7-1-2014	Amend	8-1-2014
837-012-0330	7-1-2014	Amend	8-1-2014	837-012-0870	7-1-2014	Amend	8-1-2014
837-012-0340	7-1-2014	Amend	8-1-2014	837-012-0875	7-1-2014	Amend	8-1-2014
837-012-0350	7-1-2014	Amend	8-1-2014	837-012-0880	7-1-2014	Amend	8-1-2014
837-012-0360	7-1-2014	Amend	8-1-2014	837-012-0890	7-1-2014	Amend	8-1-2014
837-012-0370	7-1-2014	Amend	8-1-2014	837-012-0900	7-1-2014	Amend	8-1-2014
837-012-0500	7-1-2014	Amend	8-1-2014	837-012-0910	7-1-2014	Amend	8-1-2014
837-012-0505	7-1-2014	Amend	8-1-2014	837-012-0920	7-1-2014	Amend	8-1-2014
837-012-0510	7-1-2014	Amend	8-1-2014	837-012-0930	7-1-2014	Repeal	8-1-2014
837-012-0515	7-1-2014	Amend	8-1-2014	837-012-0940	7-1-2014	Amend	8-1-2014
837-012-0520	7-1-2014	Amend	8-1-2014	837-012-0950	7-1-2014	Amend	8-1-2014
837-012-0525	7-1-2014	Amend	8-1-2014	837-012-0960	7-1-2014	Amend	8-1-2014
837-012-0530	7-1-2014	Amend	8-1-2014	837-012-0970	7-1-2014	Amend	8-1-2014
837-012-0535	7-1-2014	Amend	8-1-2014	837-012-1000	7-1-2014	Amend	8-1-2014
837-012-0540	7-1-2014	Amend	8-1-2014	837-012-1010	7-1-2014	Amend	8-1-2014
837-012-0545	7-1-2014	Amend	8-1-2014	837-012-1020	7-1-2014	Amend	8-1-2014
837-012-0550	7-1-2014	Amend	8-1-2014	837-012-1030	7-1-2014	Amend	8-1-2014
837-012-0555	7-1-2014	Amend	8-1-2014	837-012-1040	7-1-2014	Amend	8-1-2014
837-012-0560	7-1-2014	Amend	8-1-2014	837-012-1050	7-1-2014	Amend	8-1-2014
837-012-0565	7-1-2014	Amend	8-1-2014	837-012-1060	7-1-2014	Amend	8-1-2014
837-012-0570	7-1-2014	Amend	8-1-2014	837-012-1070	7-1-2014	Amend	8-1-2014
837-012-0600	7-1-2014	Amend	8-1-2014	837-012-1080	7-1-2014	Amend	8-1-2014
837-012-0605	7-1-2014	Amend	8-1-2014	837-012-1090	7-1-2014	Amend	8-1-2014

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837-012-1110	7-1-2014	Amend	8-1-2014	839-006-0450	2-19-2014	Amend(T)	4-1-2014
837-012-1120	7-1-2014	Amend	8-1-2014	839-006-0450	5-30-2014	Amend	7-1-2014
837-012-1130	7-1-2014	Amend	8-1-2014	839-006-0450(T)	2-19-2014	Suspend	4-1-2014
837-012-1140	7-1-2014	Amend	8-1-2014	839-009-0210	12-31-2013	Amend	2-1-2014
837-012-1150	7-1-2014	Amend	8-1-2014	839-009-0230	12-31-2013	Amend	2-1-2014
837-012-1160	7-1-2014	Amend	8-1-2014	839-009-0240	12-31-2013	Amend	2-1-2014
837-040-0010	7-1-2014	Amend	6-1-2014	839-009-0250	12-31-2013	Amend	2-1-2014
837-040-0020	7-1-2014	Amend	6-1-2014	839-009-0270	12-31-2013	Amend	2-1-2014
837-040-0140	7-1-2014	Amend	6-1-2014	839-009-0280	12-31-2013	Amend	2-1-2014
837-085-0040	1-9-2014	Amend	2-1-2014	839-009-0280	12-31-2013	Amend	2-1-2014
837-085-0090	1-9-2014	Amend	2-1-2014	839-009-0325	12-31-2013	Amend	2-1-2014
837-085-0280	1-9-2014	Amend	2-1-2014	839-009-0330	12-31-2013	Amend	2-1-2014
837-090-1030	7-1-2014	Amend	8-1-2014	839-009-0340	12-31-2013	Amend	2-1-2014
839-001-0300	5-5-2014	Amend	6-1-2014	839-009-0345	12-31-2013	Amend	2-1-2014
839-001-0440	1-1-2014	Amend	2-1-2014	839-009-0362	12-31-2013	Amend	2-1-2014
839-001-0450	1-1-2014	Amend	2-1-2014	839-009-0363	12-31-2013	Amend	2-1-2014
839-003-0005	12-30-2013	Amend	2-1-2014	839-009-0380	12-31-2013	Amend	2-1-2014
839-003-0020	12-30-2013	Amend	2-1-2014	839-009-0390	12-31-2013	Amend	2-1-2014
839-003-0031	12-30-2013	Amend	2-1-2014	839-009-0430	12-31-2013	Amend	2-1-2014
839-003-0090	12-30-2013	Amend	2-1-2014	839-010-0000	12-30-2013	Amend	2-1-2014
839-003-0100	12-30-2013	Amend	2-1-2014	839-010-0300	12-30-2013	Adopt	2-1-2014
839-003-0235	12-30-2013	Amend	2-1-2014	839-010-0305	12-30-2013	Adopt	2-1-2014
839-003-0245	12-30-2013	Amend	2-1-2014	839-010-0310	12-30-2013	Adopt	2-1-2014
839-005-0003	12-30-2013	Amend	2-1-2014	839-015-0155	1-21-2014	Amend(T)	3-1-2014
839-005-0011	12-30-2013	Amend	2-1-2014	839-015-0155	4-10-2014	Amend	5-1-2014
839-005-0030	12-30-2013	Amend	2-1-2014	839-019-0004	1-1-2014	Amend	2-1-2014
839-005-0060	12-30-2013	Amend	2-1-2014	839-019-0010	1-1-2014	Amend	2-1-2014
839-005-0065	12-30-2013	Amend	2-1-2014	839-019-0100	1-1-2014	Amend	2-1-2014
839-005-0070	12-30-2013	Amend	2-1-2014	839-020-0004	1-1-2014	Amend	2-1-2014
839-005-0075	12-30-2013	Amend	2-1-2014	839-020-0025	1-1-2014	Amend	2-1-2014
839-005-0080	12-30-2013	Amend	2-1-2014	839-020-0040	1-1-2014	Amend	2-1-2014
839-005-0085	12-30-2013	Amend	2-1-2014	839-020-0050	1-1-2014	Amend	2-1-2014
839-005-0160	12-30-2013	Amend	2-1-2014	839-020-0070	1-1-2014	Amend	2-1-2014
839-005-0170	12-30-2013	Amend	2-1-2014	839-020-01010	1-1-2014	Amend	2-1-2014
839-005-0200	12-30-2013	Amend	2-1-2014	839-021-0006	1-1-2014	Amend	2-1-2014
839-005-0205	7-3-2014	Amend	8-1-2014	839-021-0067	1-1-2014	Amend	2-1-2014
839-005-0206	12-30-2013	Amend	2-1-2014	839-021-0070	1-1-2014	Amend	2-1-2014
839-005-0300	12-30-2013	Adopt	2-1-2014	839-021-0072	1-1-2014	Amend	2-1-2014
839-005-0305	12-30-2013	Adopt	2-1-2014	839-021-0087	1-1-2014	Amend	2-1-2014
839-005-0310	12-30-2013	Adopt	2-1-2014	839-021-0097	1-1-2014	Amend	2-1-2014
839-005-0315	12-30-2013	Adopt	2-1-2014	839-021-0102	1-1-2014	Amend	2-1-2014
839-005-0320	12-30-2013	Adopt	2-1-2014	839-021-0104	1-1-2014	Amend	2-1-2014
839-005-0325	12-30-2013	Adopt	2-1-2014	839-021-0175	1-1-2014	Amend	2-1-2014
839-005-0400	12-30-2013	Adopt	2-1-2014	839-021-0220	1-1-2014	Amend	2-1-2014
839-006-0205	12-30-2013	Amend	2-1-2014	839-021-0221	1-1-2014	Amend	2-1-2014
839-006-0212	12-30-2013	Amend	2-1-2014	839-021-0246	1-1-2014	Amend	2-1-2014
839-006-0270	12-30-2013	Amend	2-1-2014	839-021-0248	1-1-2014	Amend	2-1-2014
839-006-0290	12-30-2013	Amend	2-1-2014	839-021-0255	1-1-2014	Amend	2-1-2014
839-006-0291	12-30-2013	Adopt	2-1-2014	839-021-0265	1-1-2014	Amend	2-1-2014
839-006-0292	12-30-2013	Adopt	2-1-2014	839-021-0280	1-1-2014	Amend	2-1-2014
839-006-0295	12-30-2013	Amend	2-1-2014	839-021-0290	1-1-2014	Amend	2-1-2014
839-006-0305	12-30-2013	Amend	2-1-2014	839-021-0292	1-1-2014	Amend	2-1-2014
839-006-0307	12-30-2013	Am. & Ren.	2-1-2014	839-021-0294	1-1-2014	Amend	2-1-2014
839-006-0332	12-30-2013	ReNUMBER	2-1-2014	839-021-0297	1-1-2014	Amend	2-1-2014
839-006-0345	12-30-2013	Adopt	2-1-2014	839-021-0315	1-1-2014	Amend	2-1-2014
				839-021-0320	1-1-2014	Amend	2-1-2014

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839-021-0330	1-1-2014	Amend	2-1-2014	839-050-0160	4-15-2014	Amend	5-1-2014
839-021-0335	1-1-2014	Amend	2-1-2014	839-050-0170	4-15-2014	Amend	5-1-2014
839-021-0340	1-1-2014	Amend	2-1-2014	839-050-0180	4-15-2014	Amend	5-1-2014
839-021-0345	1-1-2014	Amend	2-1-2014	839-050-0190	4-15-2014	Amend	5-1-2014
839-021-0350	1-1-2014	Amend	2-1-2014	839-050-0200	4-15-2014	Amend	5-1-2014
839-021-0355	1-1-2014	Amend	2-1-2014	839-050-0210	4-15-2014	Amend	5-1-2014
839-021-0360	1-1-2014	Amend	2-1-2014	839-050-0220	4-15-2014	Amend	5-1-2014
839-021-0365	1-1-2014	Amend	2-1-2014	839-050-0230	4-15-2014	Amend	5-1-2014
839-021-0370	1-1-2014	Amend	2-1-2014	839-050-0240	4-15-2014	Amend	5-1-2014
839-021-0490	1-1-2014	Amend	2-1-2014	839-050-0250	4-15-2014	Amend	5-1-2014
839-022-0000	1-1-2014	Repeal	2-1-2014	839-050-0255	4-15-2014	Amend	5-1-2014
839-022-0010	1-1-2014	Repeal	2-1-2014	839-050-0260	4-15-2014	Amend	5-1-2014
839-022-0100	1-1-2014	Repeal	2-1-2014	839-050-0270	4-15-2014	Amend	5-1-2014
839-022-0105	1-1-2014	Repeal	2-1-2014	839-050-0280	4-15-2014	Amend	5-1-2014
839-022-0110	1-1-2014	Repeal	2-1-2014	839-050-0290	4-15-2014	Amend	5-1-2014
839-022-0115	1-1-2014	Repeal	2-1-2014	839-050-0300	4-15-2014	Amend	5-1-2014
839-022-0120	1-1-2014	Repeal	2-1-2014	839-050-0310	4-15-2014	Amend	5-1-2014
839-022-0125	1-1-2014	Repeal	2-1-2014	839-050-0320	4-15-2014	Amend	5-1-2014
839-022-0130	1-1-2014	Repeal	2-1-2014	839-050-0330	4-15-2014	Amend	5-1-2014
839-022-0135	1-1-2014	Repeal	2-1-2014	839-050-0340	4-15-2014	Amend	5-1-2014
839-022-0140	1-1-2014	Repeal	2-1-2014	839-050-0350	4-15-2014	Amend	5-1-2014
839-022-0145	1-1-2014	Repeal	2-1-2014	839-050-0360	4-15-2014	Amend	5-1-2014
839-022-0150	1-1-2014	Repeal	2-1-2014	839-050-0370	4-15-2014	Amend	5-1-2014
839-022-0155	1-1-2014	Repeal	2-1-2014	839-050-0380	4-15-2014	Amend	5-1-2014
839-022-0160	1-1-2014	Repeal	2-1-2014	839-050-0400	4-15-2014	Amend	5-1-2014
839-022-0165	1-1-2014	Repeal	2-1-2014	839-050-0410	4-15-2014	Amend	5-1-2014
839-025-0004	1-1-2014	Amend	2-1-2014	839-050-0420	4-15-2014	Amend	5-1-2014
839-025-0010	1-1-2014	Amend	2-1-2014	839-050-0430	4-15-2014	Amend	5-1-2014
839-025-0013	1-1-2014	Amend	2-1-2014	839-050-0440	4-15-2014	Amend	5-1-2014
839-025-0020	1-1-2014	Amend	2-1-2014	839-050-0445	4-15-2014	Amend	5-1-2014
839-025-0035	1-1-2014	Amend	2-1-2014	845-004-0001	1-1-2014	Amend	1-1-2014
839-025-0043	1-1-2014	Amend	2-1-2014	845-005-0311	1-1-2014	Amend	1-1-2014
839-025-0085	1-1-2014	Amend	2-1-2014	845-005-0329	6-1-2014	Adopt	6-1-2014
839-025-0090	1-1-2014	Amend	2-1-2014	845-005-0331	6-1-2014	Amend	6-1-2014
839-025-0095	1-1-2014	Amend	2-1-2014	845-005-0431	3-1-2014	Amend	3-1-2014
839-025-0230	1-1-2014	Amend	2-1-2014	845-005-0440	3-1-2014	Amend	3-1-2014
839-025-0530	1-1-2014	Amend	2-1-2014	845-006-0309	6-1-2014	Adopt	6-1-2014
839-025-0700	1-1-2014	Amend	2-1-2014	845-006-0335	1-1-2014	Amend	1-1-2014
839-025-0700	4-2-2014	Amend	5-1-2014	845-006-0392	1-1-2014	Amend	1-1-2014
839-025-0700	7-1-2014	Amend	7-1-2014	845-006-0396	1-1-2014	Amend	1-1-2014
839-050-0000	4-15-2014	Amend	5-1-2014	845-006-0452	3-1-2014	Amend	3-1-2014
839-050-0010	4-15-2014	Amend	5-1-2014	845-009-0130	6-1-2014	Amend	6-1-2014
839-050-0020	4-15-2014	Amend	5-1-2014	845-013-0001	1-1-2014	Amend	1-1-2014
839-050-0030	4-15-2014	Amend	5-1-2014	845-020-0020	5-1-2014	Amend	5-1-2014
839-050-0040	4-15-2014	Amend	5-1-2014	847-001-0024	1-14-2014	Adopt	2-1-2014
839-050-0050	4-15-2014	Amend	5-1-2014	847-001-0045	4-9-2014	Adopt	5-1-2014
839-050-0060	4-15-2014	Amend	5-1-2014	847-005-0005	4-9-2014	Amend	5-1-2014
839-050-0070	4-15-2014	Amend	5-1-2014	847-008-0003	4-9-2014	Amend	5-1-2014
839-050-0080	4-15-2014	Amend	5-1-2014	847-008-0070	1-14-2014	Amend	2-1-2014
839-050-0090	4-15-2014	Amend	5-1-2014	847-010-0053	1-14-2014	Repeal	2-1-2014
839-050-0100	4-15-2014	Amend	5-1-2014	847-010-0060	1-14-2014	Amend	2-1-2014
839-050-0110	4-15-2014	Amend	5-1-2014	847-020-0110	1-14-2014	Amend	2-1-2014
839-050-0120	4-15-2014	Amend	5-1-2014	847-020-0183	4-9-2014	Amend	5-1-2014
839-050-0130	4-15-2014	Amend	5-1-2014	847-050-0020	1-14-2014	Amend	2-1-2014
839-050-0140	4-15-2014	Amend	5-1-2014	847-050-0023	1-14-2014	Amend	2-1-2014

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847-050-0026	1-14-2014	Repeal	2-1-2014	851-061-0080	1-1-2014	Amend	1-1-2014
847-050-0043	4-9-2014	Amend	5-1-2014	851-061-0090	1-1-2014	Amend	1-1-2014
847-070-0019	1-14-2014	Amend	2-1-2014	851-062-0010	1-1-2014	Amend	1-1-2014
847-070-0036	1-14-2014	Repeal	2-1-2014	851-062-0010	8-1-2014	Amend	8-1-2014
847-070-0037	1-14-2014	Amend	2-1-2014	851-062-0050	1-1-2014	Amend	1-1-2014
847-070-0045	4-9-2014	Amend	5-1-2014	851-062-0050	8-1-2014	Amend	8-1-2014
847-080-0002	1-14-2014	Amend	2-1-2014	851-062-0080	1-1-2014	Amend	1-1-2014
847-080-0021	4-9-2014	Amend	5-1-2014	851-062-0130	1-1-2014	Amend	1-1-2014
848-001-0005	1-1-2014	Amend	1-1-2014	851-070-0005	4-1-2014	Amend	4-1-2014
848-005-0020	1-1-2014	Amend	1-1-2014	851-070-0040	4-1-2014	Amend	4-1-2014
848-005-0030	1-1-2014	Amend	1-1-2014	851-070-0080	4-1-2014	Amend	4-1-2014
848-010-0010	1-1-2014	Amend	1-1-2014	851-070-0090	4-1-2014	Amend	4-1-2014
848-010-0015	1-1-2014	Amend	1-1-2014	851-070-0100	4-1-2014	Amend	4-1-2014
848-010-0020	1-1-2014	Amend	1-1-2014	852-010-0080	1-3-2014	Amend	2-1-2014
848-010-0026	1-1-2014	Amend	1-1-2014	852-050-0005	1-3-2014	Amend	2-1-2014
848-010-0033	1-1-2014	Amend	1-1-2014	852-050-0016	1-3-2014	Amend	2-1-2014
848-010-0035	1-1-2014	Amend	1-1-2014	855-007-0080	1-24-2014	Amend	3-1-2014
848-010-0044	1-1-2014	Amend	1-1-2014	855-011-0020	1-24-2014	Amend	3-1-2014
848-015-0030	1-1-2014	Amend	1-1-2014	855-019-0130	4-25-2014	Amend(T)	6-1-2014
848-020-0000	1-1-2014	Amend	1-1-2014	855-019-0150	2-28-2014	Amend(T)	4-1-2014
848-020-0060	1-1-2014	Amend	1-1-2014	855-019-0150	6-18-2014	Amend	8-1-2014
848-035-0010	4-1-2014	Amend	4-1-2014	855-019-0205	1-24-2014	Amend	3-1-2014
848-035-0015	4-1-2014	Amend	4-1-2014	855-019-0270	1-24-2014	Amend	3-1-2014
848-035-0020	4-1-2014	Amend	4-1-2014	855-019-0280	1-24-2014	Amend	3-1-2014
848-035-0030	4-1-2014	Amend	4-1-2014	855-041-1001	1-24-2014	Adopt	3-1-2014
848-035-0035	4-1-2014	Amend	4-1-2014	855-041-1030	1-24-2014	Amend	3-1-2014
848-035-0040	4-1-2014	Amend	4-1-2014	855-041-1105	1-24-2014	Amend	3-1-2014
848-040-0105	1-1-2014	Amend	1-1-2014	855-041-2300	1-24-2014	Adopt	3-1-2014
848-040-0110	1-1-2014	Amend	1-1-2014	855-041-2300(T)	1-24-2014	Repeal	3-1-2014
848-040-0117	1-1-2014	Amend	1-1-2014	855-041-2310	1-24-2014	Adopt	3-1-2014
848-040-0147	1-1-2014	Amend	1-1-2014	855-041-2310(T)	1-24-2014	Repeal	3-1-2014
848-040-0150	1-1-2014	Amend	1-1-2014	855-041-2320	1-24-2014	Adopt	3-1-2014
848-045-0010	1-1-2014	Amend	1-1-2014	855-041-2320(T)	1-24-2014	Repeal	3-1-2014
850-030-0035	7-10-2014	Amend	8-1-2014	855-041-2330	1-24-2014	Adopt	3-1-2014
850-035-0230	7-10-2014	Amend	8-1-2014	855-041-2330(T)	1-24-2014	Repeal	3-1-2014
850-060-0226	4-9-2014	Amend	5-1-2014	855-041-4200	1-3-2014	Amend	2-1-2014
850-060-0226	7-10-2014	Amend	8-1-2014	855-080-0021	12-20-2013	Amend(T)	2-1-2014
851-021-0005	1-1-2014	Amend	1-1-2014	855-080-0021	2-28-2014	Amend(T)	4-1-2014
851-021-0010	1-1-2014	Amend	1-1-2014	855-080-0021	4-15-2014	Amend(T)	5-1-2014
851-021-0025	1-1-2014	Amend	1-1-2014	855-080-0021	6-18-2014	Amend	8-1-2014
851-021-0050	1-1-2014	Amend	1-1-2014	855-110-0005	1-3-2014	Amend	2-1-2014
851-021-0120	1-1-2014	Amend	1-1-2014	855-110-0007	1-3-2014	Amend	2-1-2014
851-050-0000	1-1-2014	Amend	1-1-2014	856-010-0003	1-23-2014	Amend	3-1-2014
851-050-0001	1-1-2014	Amend	1-1-2014	856-010-0006	1-23-2014	Adopt	3-1-2014
851-050-0002	1-1-2014	Amend	1-1-2014	856-010-0010	5-23-2014	Amend(T)	7-1-2014
851-050-0005	7-1-2014	Amend(T)	8-1-2014	856-010-0011	5-23-2014	Amend(T)	7-1-2014
851-054-0010	1-1-2014	Amend	1-1-2014	856-010-0012	5-23-2014	Amend(T)	7-1-2014
851-054-0020	1-1-2014	Amend	1-1-2014	858-010-0036	3-24-2014	Amend	5-1-2014
851-054-0021	1-1-2014	Amend	1-1-2014	858-010-0075	6-2-2014	Amend	7-1-2014
851-054-0030	1-1-2014	Adopt	1-1-2014	858-040-0015	1-1-2015	Amend	7-1-2014
851-054-0035	1-1-2014	Adopt	1-1-2014	858-040-0020	1-1-2015	Am. & Ren.	7-1-2014
851-054-0040	1-1-2014	Amend	1-1-2014	858-040-0025	1-1-2015	Amend	7-1-2014
851-056-0020	1-1-2014	Amend	1-1-2014	858-040-0026	1-1-2015	Amend	7-1-2014
851-056-0022	1-1-2014	Amend	1-1-2014	858-040-0035	1-1-2015	Amend	7-1-2014
851-061-0020	1-1-2014	Amend	1-1-2014	858-040-0036	1-1-2015	Amend	7-1-2014

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858-040-0065	1-1-2015	Amend	7-1-2014	860-033-0007	12-20-2013	Amend	2-1-2014
859-200-0005	3-5-2014	Adopt	4-1-2014	860-033-0007(T)	12-20-2013	Repeal	2-1-2014
859-200-0010	3-5-2014	Adopt	4-1-2014	860-033-0010	12-20-2013	Amend	2-1-2014
859-200-0015	3-5-2014	Adopt	4-1-2014	860-033-0010(T)	12-20-2013	Repeal	2-1-2014
859-200-0020	3-5-2014	Adopt	4-1-2014	860-033-0030	12-20-2013	Amend	2-1-2014
859-200-0025	3-5-2014	Adopt	4-1-2014	860-033-0030(T)	12-20-2013	Repeal	2-1-2014
859-200-0030	3-5-2014	Adopt	4-1-2014	860-033-0035	12-20-2013	Amend	2-1-2014
859-200-0035	3-5-2014	Adopt	4-1-2014	860-033-0035(T)	12-20-2013	Repeal	2-1-2014
859-200-0040	3-5-2014	Adopt	4-1-2014	860-033-0040	12-20-2013	Amend	2-1-2014
859-200-0045	3-5-2014	Adopt	4-1-2014	860-033-0040(T)	12-20-2013	Repeal	2-1-2014
859-200-0050	3-5-2014	Adopt	4-1-2014	860-033-0045	12-20-2013	Amend	2-1-2014
859-200-0055	3-5-2014	Adopt	4-1-2014	860-033-0045(T)	12-20-2013	Repeal	2-1-2014
859-200-0060	3-5-2014	Adopt	4-1-2014	860-033-0046	12-20-2013	Amend	2-1-2014
859-200-0065	3-5-2014	Adopt	4-1-2014	860-033-0046(T)	12-20-2013	Repeal	2-1-2014
859-200-0070	3-5-2014	Adopt	4-1-2014	860-033-0050	12-20-2013	Amend	2-1-2014
859-200-0075	3-5-2014	Adopt	4-1-2014	860-033-0050(T)	12-20-2013	Repeal	2-1-2014
859-200-0080	3-5-2014	Adopt	4-1-2014	860-033-0055	12-20-2013	Repeal	2-1-2014
859-200-0085	3-5-2014	Adopt	4-1-2014	860-033-0100	12-20-2013	Amend	2-1-2014
859-200-0090	3-5-2014	Adopt	4-1-2014	860-033-0100(T)	12-20-2013	Repeal	2-1-2014
859-200-0095	3-5-2014	Adopt	4-1-2014	860-033-0110	12-20-2013	Adopt	2-1-2014
859-200-0100	3-5-2014	Adopt	4-1-2014	860-033-0110(T)	12-20-2013	Repeal	2-1-2014
859-200-0105	3-5-2014	Adopt	4-1-2014	860-033-0530	12-20-2013	Amend	2-1-2014
859-200-0110	3-5-2014	Adopt	4-1-2014	860-033-0530(T)	12-20-2013	Repeal	2-1-2014
859-200-0115	3-5-2014	Adopt	4-1-2014	860-033-0535	12-20-2013	Amend	2-1-2014
859-200-0120	3-5-2014	Adopt	4-1-2014	860-033-0535(T)	12-20-2013	Repeal	2-1-2014
859-200-0125	3-5-2014	Adopt	4-1-2014	860-033-0536	12-20-2013	Amend	2-1-2014
859-200-0130	3-5-2014	Adopt	4-1-2014	860-033-0536(T)	12-20-2013	Repeal	2-1-2014
859-200-0135	3-5-2014	Adopt	4-1-2014	860-033-0537	12-20-2013	Amend	2-1-2014
859-200-0140	3-5-2014	Adopt	4-1-2014	860-033-0537(T)	12-20-2013	Repeal	2-1-2014
859-200-0145	3-5-2014	Adopt	4-1-2014	860-033-0540	12-20-2013	Amend	2-1-2014
859-200-0150	3-5-2014	Adopt	4-1-2014	860-033-0540(T)	12-20-2013	Repeal	2-1-2014
859-200-0200	3-5-2014	Adopt	4-1-2014	860-034-0130	6-26-2014	Amend	8-1-2014
859-200-0205	3-5-2014	Adopt	4-1-2014	860-034-0390	1-22-2014	Amend	3-1-2014
859-200-0210	3-5-2014	Adopt	4-1-2014	860-036-0135	6-26-2014	Amend	8-1-2014
859-200-0215	3-5-2014	Adopt	4-1-2014	860-037-0120	6-26-2014	Amend	8-1-2014
859-200-0220	3-5-2014	Adopt	4-1-2014	860-038-0005	3-7-2014	Amend	4-1-2014
859-200-0225	3-5-2014	Adopt	4-1-2014	860-038-0300	3-7-2014	Amend	4-1-2014
859-200-0230	3-5-2014	Adopt	4-1-2014	863-003-0000	4-28-2014	Adopt	5-1-2014
859-200-0235	3-5-2014	Adopt	4-1-2014	863-003-0005	4-28-2014	Adopt	5-1-2014
859-200-0300	3-5-2014	Adopt	4-1-2014	863-003-0010	4-28-2014	Adopt	5-1-2014
859-200-0305	3-5-2014	Adopt	4-1-2014	863-003-0020	4-28-2014	Adopt	5-1-2014
859-200-0310	3-5-2014	Adopt	4-1-2014	863-003-0040	4-28-2014	Adopt	5-1-2014
860-001-0310	1-9-2014	Amend	2-1-2014	863-003-0050	4-28-2014	Adopt	5-1-2014
860-021-0135	6-26-2014	Amend	8-1-2014	863-003-0060	4-28-2014	Adopt	5-1-2014
860-023-0055	1-22-2014	Amend	3-1-2014	863-003-0070	4-28-2014	Adopt	5-1-2014
860-027-0005	5-28-2014	Amend	7-1-2014	863-003-0080	4-28-2014	Adopt	5-1-2014
860-027-0015	5-28-2014	Amend	7-1-2014	863-003-0090	4-28-2014	Adopt	5-1-2014
860-027-0045	5-28-2014	Amend	7-1-2014	863-003-0100	4-28-2014	Adopt	5-1-2014
860-027-0070	5-28-2014	Amend	7-1-2014	863-003-0110	4-28-2014	Adopt	5-1-2014
860-032-0012	1-22-2014	Amend	3-1-2014	863-014-0003	4-28-2014	Amend	5-1-2014
860-033-0001	12-20-2013	Amend	2-1-2014	863-014-0010	4-28-2014	Amend	5-1-2014
860-033-0001(T)	12-20-2013	Repeal	2-1-2014	863-014-0015	4-28-2014	Amend	5-1-2014
860-033-0005	12-20-2013	Amend	2-1-2014	863-014-0015	4-28-2014	Amend	5-1-2014
860-033-0005(T)	12-20-2013	Repeal	2-1-2014	863-014-0020	4-28-2014	Amend	5-1-2014
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863-014-0050	4-28-2014	Amend	5-1-2014	918-098-1215	4-1-2014	Amend	5-1-2014
863-014-0062	4-28-2014	Amend	5-1-2014	918-098-1450	4-1-2014	Amend	5-1-2014
863-014-0063	4-28-2014	Amend	5-1-2014	918-098-1470	4-1-2014	Amend	5-1-2014
863-014-0065	4-28-2014	Amend	5-1-2014	918-098-1500	4-1-2014	Amend	5-1-2014
863-014-0066	4-28-2014	Amend	5-1-2014	918-098-1525	4-1-2014	Adopt	5-1-2014
863-014-0095	4-28-2014	Amend	5-1-2014	918-098-1550	4-1-2014	Amend	5-1-2014
863-014-0100	4-28-2014	Amend	5-1-2014	918-098-1560	4-1-2014	Repeal	5-1-2014
863-015-0003	4-28-2014	Amend	5-1-2014	918-282-0450	2-12-2014	Adopt(T)	3-1-2014
863-015-0081	4-28-2014	Adopt	5-1-2014	918-282-0455	2-12-2014	Adopt(T)	3-1-2014
863-020-0000	4-28-2014	Amend	5-1-2014	918-282-0455	2-21-2014	Adopt(T)	4-1-2014
863-020-0010	4-28-2014	Amend	5-1-2014	918-282-0455(T)	2-21-2014	Suspend	4-1-2014
863-020-0015	4-28-2014	Amend	5-1-2014	918-282-0460	2-12-2014	Adopt(T)	3-1-2014
863-020-0030	4-28-2014	Amend	5-1-2014	918-440-0010	7-1-2014	Amend	8-1-2014
863-020-0030	4-28-2014	Amend	5-1-2014	918-440-0012	7-1-2014	Amend	8-1-2014
863-020-0040	4-28-2014	Amend	5-1-2014	918-440-0050	7-1-2014	Amend	8-1-2014
863-020-0055	4-28-2014	Amend	5-1-2014	918-460-0010	7-1-2014	Amend	8-1-2014
863-020-0060	4-28-2014	Amend	5-1-2014	918-460-0015	7-1-2014	Amend	8-1-2014
863-024-0003	4-28-2014	Amend	5-1-2014	918-460-0050	7-1-2014	Amend	8-1-2014
863-024-0015	4-28-2014	Amend	5-1-2014	918-460-0500	7-1-2014	Amend	8-1-2014
863-024-0015	4-28-2014	Amend	5-1-2014	918-460-0510	7-1-2014	Repeal	8-1-2014
863-024-0045	4-28-2014	Amend	5-1-2014	943-014-0050	2-18-2014	Repeal	3-1-2014
863-024-0050	4-28-2014	Amend	5-1-2014	943-014-0400	2-18-2014	Adopt	3-1-2014
863-024-0062	4-28-2014	Amend	5-1-2014	943-014-0410	2-18-2014	Adopt	3-1-2014
863-024-0063	4-28-2014	Amend	5-1-2014	943-014-0415	2-18-2014	Adopt	3-1-2014
863-024-0065	4-28-2014	Amend	5-1-2014	943-014-0420	2-18-2014	Adopt	3-1-2014
863-024-0066	4-28-2014	Amend	5-1-2014	943-014-0430	2-18-2014	Adopt	3-1-2014
863-024-0095	4-28-2014	Amend	5-1-2014	943-014-0435	2-18-2014	Adopt	3-1-2014
863-024-0100	4-28-2014	Amend	5-1-2014	943-014-0440	2-18-2014	Adopt	3-1-2014
863-025-0010	4-28-2014	Amend	5-1-2014	943-014-0445	2-18-2014	Adopt	3-1-2014
875-005-0005	1-17-2014	Amend	3-1-2014	943-014-0450	2-18-2014	Adopt	3-1-2014
875-010-0000	1-17-2014	Amend	3-1-2014	943-014-0455	2-18-2014	Adopt	3-1-2014
875-010-0016	1-17-2014	Amend	3-1-2014	943-014-0460	2-18-2014	Adopt	3-1-2014
875-010-0021	1-17-2014	Amend	3-1-2014	943-014-0465	2-18-2014	Adopt	3-1-2014
875-010-0045	1-17-2014	Amend	3-1-2014	943-070-0000	3-10-2014	Adopt	4-1-2014
875-010-0050	1-17-2014	Amend	3-1-2014	943-070-0010	3-10-2014	Adopt	4-1-2014
875-010-0090	1-17-2014	Amend	3-1-2014	943-070-0020	3-10-2014	Adopt	4-1-2014
875-015-0020	1-17-2014	Amend	3-1-2014	943-070-0030	3-10-2014	Adopt	4-1-2014
875-015-0030	1-17-2014	Amend	3-1-2014	943-070-0040	3-10-2014	Adopt	4-1-2014
875-030-0010	1-17-2014	Amend	3-1-2014	943-070-0050	3-10-2014	Adopt	4-1-2014
875-030-0020	1-17-2014	Amend	3-1-2014	943-070-0060	3-10-2014	Adopt	4-1-2014
875-030-0025	4-22-2014	Amend	6-1-2014	943-070-0070	3-10-2014	Adopt	4-1-2014
875-030-0030	1-17-2014	Amend	3-1-2014	945-030-0025	7-9-2014	Adopt(T)	8-1-2014
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875-030-0050	1-17-2014	Amend	3-1-2014	945-030-0045	1-16-2014	Adopt	3-1-2014
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918-008-0000	4-1-2014	Amend	3-1-2014	945-040-0040	5-12-2014	Amend	6-1-2014
918-020-0090	1-1-2014	Amend	2-1-2014	945-040-0060	5-12-2014	Amend	6-1-2014
918-020-0370	1-1-2014	Amend	2-1-2014	945-040-0090	5-12-2014	Amend	6-1-2014
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918-098-1000	4-1-2014	Amend	5-1-2014	945-040-0110	5-12-2014	Amend	6-1-2014
918-098-1005	4-1-2014	Amend	5-1-2014	945-040-0140	5-12-2014	Amend	6-1-2014
918-098-1010	1-1-2014	Amend	2-1-2014	945-040-0180	11-18-2013	Adopt(T)	1-1-2014
918-098-1010	4-1-2014	Amend	5-1-2014	945-040-0180	12-23-2013	Adopt(T)	2-1-2014
918-098-1015	4-1-2014	Amend	5-1-2014	945-040-0180	5-12-2014	Adopt	6-1-2014
918-098-1030	4-1-2014	Repeal	5-1-2014	945-040-0180(T)	12-23-2013	Suspend	2-1-2014

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952-001-0020	3-7-2014	Amend	4-1-2014				
952-001-0030	3-7-2014	Amend	4-1-2014				
952-001-0040	3-7-2014	Amend	4-1-2014				
952-001-0050	3-7-2014	Amend	4-1-2014				
952-001-0060	3-7-2014	Amend	4-1-2014				
952-001-0070	3-7-2014	Amend	4-1-2014				
952-001-0080	3-7-2014	Amend	4-1-2014				
952-001-0090	3-7-2014	Amend	4-1-2014				
952-001-0100	3-7-2014	Amend	4-1-2014				
966-100-0600	7-1-2014	Adopt	8-1-2014				
972-010-0020	5-7-2014	Amend	6-1-2014				
972-030-0040	5-7-2014	Amend	6-1-2014				

